THE DIVISION COURTS ACT OF 1880.

WITH

NUMEROUS PRACTICAL AND EXPLANATORY NOTES;

TOGETHER WITH APPROPRIATE FORMS.

ALSO,

A REPRINT OF ALL THE DECISIONS IN THE ONTARIO COURTS AFFECTING DIVISION COURT LAW OR THE DUTIES OF OFFICERS, SINCE THE PUBLICATION OF "O'BRIEN'S DIVISION COURT MANUAL, 1879."

A TABLE OF DIVISION COURT OFFICERS,

CORRECTED TO DATE;

THE RULES OF NOVEMBER, 1879, AND NEW TARIFF OF FEES,

AND A FULL INDEX.

BY

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MDCCCLXXX.

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TO

HIS HONOUR JAMES ROBERT GOWAN,

Chairman of the Board of County Judges,

HIS HONOUR JUDGE HUGHES,

AND OTHER JUDGES WHO ADORN THE COUNTY COURT BENCH,

TO WHOM THE EDITOR IS INDEBTED

FOR INVALUABLE AID IN THE PREPARATION OF THE SEVERAL EDITIONS OF

THIS WORK,

THIS VOLUME IS INSCRIBED.

PREFACE.

THE changes made in Division Court administration, by the Act of last session touch mainly upon the following points:—Increased jurisdiction, with an appeal under certain circumstances to the Court of Appeal; a provision for the appointment of an Inspector of Division Courts; the appointment of clerks and bailiffs by the Government of the day; a slight alteration in the mode of selecting jurors; appeals under the Master and Servant Act; together with numerous miscellaneous provisions intended to facilitate the practice in the Courts, or to remedy some difficulties or anomalies in the working of the Act.

The Act, as at first introduced, was not of an elaborate nature, but it rapidly grew as suggestions poured in. The result that might have been anticipated took place. Alterations were hurriedly made, and new sections were hastily adopted. Many perplexing questions have thus arisen, and there is an obscurity on many points which will probably require enlightenment either by Rules of the Judges or further action of the Legislature at some future time.

It has been the aim of the Editor to endeavour, by a careful examination of the Statute, to throw as much light as he could upon the many difficulties that meet a careful reader in almost every section, whilst, at the same time, giving to those engaged in the working of the Divis-

ion Courts—clerks, bailiffs, lawyers, and others—full, explicit and practical directions, appropriate to the various matters legislated upon. Whether he has been successful in this effort, it is for others to judge. Time has been taken to do this thoroughly and carefully.

Appropriate forms have been prepared for the various proceedings under the Act. And in an Appendix will be found a list of Division Court officers, corrected to date; a reprint of all the decisions in the Ontario Courts affecting the law of Division Courts, or the duties of officers, since the publication of the "Manual" of the author in 1879, and the Rules and Tariff of Fees promulgated by the Judges in November, 1879. A suggestion to insert an interest table for the use of clerks and bailiffs, and some blank leaves at the end of the volume, for manuscript notes, has been adopted.

The Editor desires here to express his thanks to several learned County Court Judges who have so kindly revised his proof-sheets, and thereby added largely to any merit which the volume may possess.

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RECENT DECISIONS

REPRINTED FROM THE ONTARIO REPORTS.

THE

DIVISION COURTS ACT.

42 VICT., CHAPTER 8.

An Act to extend the jurisdiction, and to regulate the offices of Division Courts.

[*Assented to March* 5, 1880.]

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. This Act may be cited as "The Division Courts Act, 1880." Short title.

NEW JURISDICTION. (*a*)

2. The jurisdiction of the Division Courts is hereby extended by adding to the fifty-fourth Jurisdiction extended.

(*a*) This heading might more accurately be referred to as an increase of jurisdiction rather than a new jurisdiction. It is not here the place to discuss the propriety or otherwise of this step on the part of the Legislature. It may, however, be stated that a majority of the County Judges did not favour the increase, and many thoughtful men conversant with the subject think that this extended jurisdiction, combined with the right of appeal hereafter given, will tend to mar the symmetry of Courts, which have answered well for the purpose originally intended,

section of the Division Courts Act, Revised Statutes of Ontario, chapter forty-seven, the following sub-section after the word "dollars" in the second sub-section of the said fifty-fourth section (*b*):

New section.

(3) "All claims for the recovery of a debt or money demand, the amount or balance of which does not exceed two hundred dollars (*c*), and the

viz.: —Courts for the collection of small debts by a simple and inexpensive process, not requiring the aid of skilled assistance, where disputes were to be finally disposed of according to equity and good conscience.

This increase will not be felt as much at first as it will in the course of a year or so, as it is thought the tendency on the part of merchants will be as far as possible to obtain signed acknowledgments of debt from their debtors so as to bring their claims within the Division Courts' jurisdiction.

(b) This section will now be as follows:

"Sec. 54—The Judge of every Division Court may hold plea of and may hear and determine, in a summary way, for or against persons, bodies corporate, or otherwise;

"1. All personal actions where the amount claimed does not exceed sixty dollars; and

"2. All claims and demands of debt, account or breach of contract, or covenant, or money demand, whether payable in money or otherwise, where the amount or balance claimed does not exceed one hundred dollars;

"3. All claims for the recovery of a debt or money demand, the amount or balance of which does not exceed two hundred dollars, and the amount or original amount of the claim is ascertained by the signature of the defendant or of the person whom, as executor or administrator, the defendant represents;

"And except in cases in which a jury is legally demanded by a party, as hereinafter provided, the Judge shall be sole Judge in all actions brought in such Division Courts, and shall determine all questions of law and fact in relation thereto, and he may make such orders, judgments or decrees thereupon as appear to him just and agreeable to equity and good conscience, and every such order, judgment and decree shall be final and conclusive between the parties."

(c) The jurisdiction under this provision is confined to claims for "a debt or money demand." The increase of jurisdiction is given when the amount of the claim, or the original amount of the claim (if a balance is sued for) is ascertained by the signature of the defendant.

The words used in sub-section 2, (see note (*b*) to section 2, *ante*,) where the jurisdiction only extends

amount, or original amount of the claim is ascertained by the signature of the defendant (*d*)

to one hundred dollars, are "all claims and demands of debt, account or breach of contract or covenant or money demand." It will, therefore, be seen that this new provision giving jurisdiction up to $200 cannot be invoked except in the same class of cases as are covered by section 79 of the Division Courts Act, under which judgment by default upon a specially endorsed summons might be entered. The words are the same in both these sections. A discussion as to the meaning of the words "debt or money demand" will be found in note (*s*) to the section referred to. (see O'Brien's D. C. Manual, p. 75.) The words 'money demand" are there shortly defined as including all claims which are not founded on damages for wrongs done; and, therefore, all such claims, if the amount sued for, or the amount of the debt, a balance of which is sued for, is ascertained by the defendant's signature, can be collected, if not in excess of $200. It will be remembered that by section 59 no action can be brought on any unsettled account, even for $100, where such account exceeded in the whole $400. But by the operation of this enlargement of the jurisdiction, an action may be brought on an account up to $200, no matter how large the original claim, provided only such *original claim* is ascertained by the signature of the defendant.

Attention was called by the writer in his Manual, p. 75, to the fact that the words of section 79 do *not* say that the amount must be *liquidated*, which is the requirement in a similar clause in the Common Law Procedure Act. It is an error therefore to suppose, as some apparently have, that the cases decided under the last named Act are applicable. There is no reason, for example, why an unsettled balance between partners, or an unliquidated claim, if not too large, could not be proceeded on under section 79, nor even under this new subsection if the original amount were ascertained by the signature of the defendant, and the claim sued on was for a balance.

The extent of the jurisdiction of Division Courts, as it now stands, may be shortly summarized in general terms as follows, subject of course to the limitations in section 53 of the Division Courts Act.

1. Actions of tort or replevin up to $60.

2. All actions of debt, account, breach of contract, covenant, or money demand up to $100.

3. Actions of debt or money demand up to $200, when the amount sued for, or the original amount, a balance of which is sued for, is ascertained by the defendant's signature, or by the signature of the person whom the defendant, as executor or administrator, represents.

(*d*) The words " ascertained by the signature of the defendant, &c.," would refer, for example, to a promissory note, bill of exchange, mortgage, money bond, agreement, lease,

letter, memorandum, I. O. U., settlement of accounts, &c., signed by the debtor.

If any part of the claim sued for is not ascertained by the signature of defendant, there would be no jurisdiction under this section. In this view the case of *Elliott* v. *Gray* was recently decided by Mackenzie, Co. J. (not reported). This was an action brought in the County Court of the County of York, on a note for $95, and an unsettled account for $9. Verdict for full amount. Upon an application for a certificate for full costs, the question arose whether the action could not have been brought in a Division Court. The learned judge very properly held that the section did not give a Division Court jurisdiction under such circumstances. After referring to the wording of the County Courts Act, he said :—"I find no decision so far pronounced in respect of the new Division Courts Act. It will be seen that the language of the Division Courts Act differs from the language of the County Courts Act. The word 'balance' is not used in the County Courts Act. The word 'liquidated' used in the County Court Act is not used in the Division Courts Act. The word 'claim' as used, I understand, means the demand such as one man has against another for money, goods, notes, &c., and the word 'balance' in accounts signifies the difference of two sums, as upon an adjustment of accounts a balance may be found against A. in favour of B. Hence to pay a balance is to pay the difference. The extending Act confines the jurisdiction of the Division Court to 'all claims for the recovery of a debt or money demand the amount or balance of which does not exceed $200, and the amount or the original amount of the claim is ascertained by the signature of the defendant.' Now the claim in the present case at the commencement of the suit was made up of a promissory note for $95, and an open unsettled account for $9, that is making the amount of the claim $104. The statute is imperative; the amount of the claim must be ascertained by the signature of the defendant, and in the present case a part of it only is ascertained—a part within the old jurisdiction is ascertained by the signature of the defendant. It appears to me that, under the statute, the whole amount of the claim must be ascertained by the signature of the defendant to bring it within the Division Court jurisdiction. The words used in the extending Act, 'The amount, or the original amount, of the claim, as ascertained by the signature of the party,' are significant. The word 'original' must mean the original claim upon which payments are made and credits given, leaving a balance. The amount of the balance is the claim. The amount of the present claim has not been ascertained by the signature of the defendant—only a part of it. If it was intended to be otherwise surely Parliament would have said so. But what it has said is, 'that the amount of the claim or the original amount of the claim must be ascertained by the signature of the defendant.' That has not been the case here. In this Court, until otherwise directed by superior authority, the rule will be that where there is a claim for an amount ascertained by the signa-

ture of the defendant, and for an amount, such as an open unsettled account, not ascertained by the signature of the party, and both amounts put the claim over $100, the plaintiff will be entitled to a certificate for full costs. When the claim is over $100 it must be ascertained by signature to bring it within the new Division Courts Act operation. I think the certificate for costs should go."

This principle, that the whole amount of the claim must be ascertained by the signature of the defendant to bring it within this section, being established, other points arise for discussion, much more difficult of solution than that in the case just cited. For example let us suppose a claim for the amount of a promissory note exceeding $100, and for notarial charges thereon. Could such a claim be sued in a Division Court under this section. The notarial charges although only a very small part of the whole amount are not, in the case supposed, which is a very common one, ascertained by the signature of the defendant. Such charges are only recoverable as damages, and were it not for the enactment in Rev. Stat. O. cap. 50, sec. 144, a special count would be necessary to cover them in a declaration in a Superior or County Court. A form of such count is given in Bullen & Leake's Prec. on this supposition. This ascertaining of the amount by the signature of the defendant confines the plaintiff to the recovery of the amount so evidenced. Should he seek anything beyond this, as for breach of contract, or damages for non payment of the amount so ascertained, he would, if this view be correct, be obliged to resort to another tribunal. This may be perhaps a technical way of looking at the subject, and many of the County Judges do not adopt it, thinking that damages which flow as a consequence from the non-payment of an ascertained amount, such as interest or notarial charges, are to be considered as part and parcel of the original ascertained claim, and moreover that the Legislature could not reasonably have intended to restrict the operation of the enactment in this way. It is submitted however that nothing will be intended in favour of the jurisdiction of an inferior court. The intent of a statute must be gathered from the law as it stood in its previous exactitude, and from the words used by the Legislature in the Act, and not from what might be supposed to have been the aim of individual members of such Legislature.

The signature of a person is of course generally found at the foot of a document, but it is laid down as law that "if a man writes his name in the first person, as 'I, J. C. agree etc., or in the third person, as, Mr. S. agrees,' this is a sufficient signature. But the mere insertion of the name of the contracting party in the body of a written contract is not of itself a sufficient signature. For, though the signature need not be placed in any particular part of the instrument, yet it must be so introduced as to govern or authenticate every material and operative part of it. Therefore where the defendant Moore wrote instructions for a lease to the plaintiff in these words, 'The lease renewed; Mrs. Stokes to pay the King's tax, also to pay Moore £24 a year, half

yearly. Mrs. Stokes to keep the house in good and tenantable repair,' etc., it was held that Moore by writing his own name in the body of the instructions had not signed an agreement for the renewal of the lease within the intent and meaning of the Statute of Frauds. If the agreement concludes 'as witness our hands,' or contains any words showing that the names of the contracting parties were to be subscribed, there is no signing within the statute, unless the names of the parties are duly subscribed at the foot of the instrument. The civil law did not require the signature of a party to a written contract if the contract was in his own handwriting. But in our own law, if the defendant has written the whole of his contract with his own hand, without signing it as a concluded agreement, this is not sufficient, as the statute has made signing absolutely necessary for the completion of the contract. A party may under certain circumstances be bound by his signature, although he subscribed in form as a witness. What within the legal intent of the statute will amount to a signing, is the same question in equity as at law. Where an offer was accepted by the defendant by telegram and the instructions for the message were signed by the defendant, and the telegram received by the plaintiff contained the message with the names of the sender and receiver written by the telegraph clerk on the usual printed form, it was held that there was a sufficient signature within the statute. If a man write his name in the vendor's order book, intending it as an order or authority to the vendor to send him certain goods specified therein, with the prices, this is a sufficient signature; so if he writes his name against the entry or memorandum in a book or ledger, or indorses his name on printed particulars of sale, printed handbills or printed descriptions specifying the goods and the price, with intent to denote that he has purchased the contents, this is a sufficient signature, and the name may be written in pencil as well as in ink. A man may sign also by his initials or by his mark, or by a stamp, and it is quite immaterial upon what part of the paper the mark or signature is to be found. But the signature must of course be made with a view of authenticating the document as a concluded contract, and not with a view merely of altering or settling a draft or approving of propositions and proposals not finally arranged and decided upon. A written admission by a purchaser to his agent that he had bought certain goods for time, is a sufficient note or memorandum of the bargain between him and the vendor." — (*Addison on Contracts*, 159).

Difficulties sometimes arise as to the execution of documents by illiterate persons. It is usual and proper in such a case that the paper should be read over to the marksman and then witnessed by some person who can write his name. But it has been held that the mere omission so to read it does not invalidate the deed (*Doe d. Biggard* v. *Millard*, E. T. 3 Vict.) But the evidence of execution would fail if the witness were to swear that the document had not been read correctly (*Hatton* v. *Fish*, 5 Q.B. 177). It has been laid

or of the person whom, as executor or administrator, the defendant represents (*e*);"

down that it would be no execution if an illiterate person were induced to make his mark without the document being read to him, although he requested that it might be (*Owens* v. *Thomas*, 6 C. P. 383).

The signature of the party sought to be charged with liability under the words of this section, would be sufficient if made by some one having express or implied authority to sign his name.

It has been laid down that, "where the note or memorandum is signed by an agent it is not necessary that the agent should obtain his authority by any written instrument.

"It has been held, consequently, under the Statute of Frauds, that the name of the party sought to be charged, printed by a printer in particulars of sale, or in any other printed paper embodying the terms of the contract, may be a signature by a person lawfully authorized. If the party has recognised and adopted his printed name or signature—if, for instance, he has sanctioned or permitted the distribution of printed handbills or printed particulars of sale in which his name appears, there has been a signature by an agent duly authorized, upon the principle that the subsequent sanction or adoption of the printed name or signature is equivalent to an antecedent authority to the printer to print it. If an agent has signed a contract without authority, and the principal subsequently adopts the contract or ratifies the transaction, he is bound by the agent's signature. But the mere introduction of a name into a written or printed paper unrecognised by the party, and not brought home to him as having been written or printed by his authority, is of course no signature within the meaning of the statute. A mere clerk or traveller of one party cannot be treated as an agent to bind the other unless it be shown that he has received specific and express authority so to do.

"One of two or more partners may bind the others by signing the customary trading name of the firm to contracts for the purchase and sale of articles usually dealt in by the firm in the course of its business.

"An auctioneer effecting a sale by auction, or an auctioneer's clerk taking down the biddings in the presence of the purchaser, is, during the continuance of the sale, but no longer, the authorized agent of the vendor and purchaser, and is enabled to sign for both or either of the parties, so as to satisfy the Statute of Frauds, And so is a broker, who is employed to sell goods and who signs and delivers bought and sold notes. Neither of the contracting parties themselves can be the agent of the other for such a purpose. The agent contemplated by the Legislature, who is to bind a defendant by his signature, must be some third person."—(Addison on Contracts, 160).

(*e*) That is, in case of the death of the debtor, where an action is

2. There shall be an appeal when the sum in dispute on such appeal—exclusive of costs—exceeds one hundred dollars, subject to the provisions of this Act (*f*).

R. S. O. c. 47, ss. 54 and 56 amended.

3. The word "forty," where it occurs in the first sub-section of the said fifty-fourth section, and in the fifty-sixth section of the said Division Courts Act, is hereby repealed, and the word "sixty" is substituted therefor (*g*).

brought against his executor or administrator, and the evidence of the debt is the signature of the deceased.

(*f*) By sec. 6 there will be no appeal if before trial the parties agree not to appeal. Sections 17 &c., provide for the mode of conducting these appeals.

The words "the sum in dispute on such appeal" are singularly obscure. Does the expression mean the amount of the claim as stated by the plaintiff, or the amount of the judgment appealed from, or the difference between the plaintiff's claim and such amount, if any, as the defendant may admit a liability for, or for which judgment may be entered.

It is clear that what is meant is not a case where the *claim* exceeds $100, for that may not be "the sum in dispute on such appeal." The words "exclusive of costs" moreover show that the amount in the mind of the Legislature was an amount arrived at after the costs had been awarded. In the opinion of the writer the section means that there may be an appeal when the amount objected to by the dissatisfied party, after the hearing, exceeds $100, exclusive of costs. Suppose, for example, a claim on a note for $150 and judgment for plaintiff for $101 and costs. In this case, if a new trial were refused, the defendant would have a right of appeal, but the plaintiff would not. But if the judgment were for the plaintiff for $49 only, he would have a right of appeal, but the defendant would not.

In County Courts there is no such limit, and the appeal may be on any amount. The curious result is thus obtained that the increased jurisdiction of the Division Courts, combined with the limitation in this sub-section, deprives parties of the right to appeal in cases where such right before existed.

Again, it will be noticed that the right of appeal is confined to the increased jurisdiction given by this Act in matters of debt or contract. There is no appeal in actions of tort or replevin; and these are cases where, as a general rule, appeals would be more beneficial, and in such cases there are generally more difficult points of law involved.

(*g*) These sections refer respectivel

Absconding Debtor's Act

4. In the class of cases provided for by the second section of this Act, the increased jurisdiction conferred by the said second section shall apply to claims and proceedings against absconding debtors under section 190 (*h*), and subsequent sections of the Division Courts Act; and in such cases the attachment may issue and proceedings may be had on a claim of not less than four dollars, and not more than two hundred dollars.

Order in which suits to be tried.

5. The clerk shall place all suits in which the sum sought to be recovered exceeds one hundred dollars, at the foot of the trial list, and the other suits on the list and business of the court shall be disposed of before entering upon the trial of any of such first mentioned suits (*i*), unless the judge shall, for special reason or reasons, otherwise order. The judge shall, in such cases, when no agreement not to appeal has been signed and filed, take

Evidence to be taken down.

to actions of tort and actions of replevin. In the former case the jurisdiction now extends to actions where the amount claimed does not exceed $60, and in the latter to actions where the value of the goods taken does not exceed that sum.

(*h*) The words used in the section referred to are "for any debt or damages arising upon any contract expressed or implied." Proceedings can now be taken against absconding debtors up to $200 where the claim is a debt or money demand and the amount is ascertained by the signature of the defendant as herein provided.

(*i*) This provision is doubtless intended to remedy as far as possible the difficulty that was suggested as to this increased jurisdiction keeping a large number of suitors and witnesses in suits for smaller amounts remaining in Court during the trial of the heavier cases.

down the evidence in writing (*j*) and shall leave the same with the clerk of the court; but in the event of application for a new trial it shall be forwarded to the judge by the clerk for the purposes of such application (*k*).

Parties may agree not to appeal.

6. No appeal shall lie to the Court of Appeal if before the court opens, or if without the intervention of the judge before the commencement of the trial, there shall be filed with the clerk, in any case, an agreement in writing (*l*) not to appeal, signed by both parties, or their attorneys or agents (*m*), and the judge shall note in his minutes whether such agreement was so filed or not, and the minutes shall be conclusive evidence upon that point.

(*j*) This provision is manifestly necessary so as to enable the appellate judge to have before him as nearly as may be the evidence as it was before the County Judge. It will necessarily lengthen the sittings and will in most Courts be a serious tax upon the judge who will thus be compelled, together with other interested parties, to endure the pestilential atmosphere of Courts which are as a rule even more ill-ventilated and impure than the majority of Court Houses. Judges will doubtless feel it their duty under this section, although not so expressly required, to take notes of any motion, or of any questions of law arising on the trial, which would be of importance in case of an appeal, as well as a note of the charge to the jury, should one be impanelled.

(*k*) See section 20.

(*l*) This agreement need not be in any specified form. If attorneys are engaged (and it is presumed that in most cases under this increased jurisdiction they will be) a suitable form would at once occur to them; if not, it need only be said that it should set out the name of the court, the style of the cause, and then state shortly that the parties thereby agreed not to exercise their right of appeal, but that the decision of the presiding judge should be final.

This memorandum might, if the parties should so desire, be made applicable to the contingency of a new trial; but parties would not in general care about tying their hands to that extent.

(*m*) See note (*v*) to section 8, subsec. 5, *post*.

Security by clerks and bailiffs.

7. The judge shall require such additional security to be given by the clerks and bailiffs of the Division Courts within his county as shall, in his opinion, afford sufficient security to any and all persons being parties in any legal proceedings in the said court, having regard to the increased jurisdiction by this Act conferred, and the increased business in the courts. Nothing in this Act contained shall release or discharge from liability in whole or in part any clerk or bailiff, or any surety for any clerk or bailiff, upon or by virtue of any bond or covenant heretofore given or entered into by such clerk or bailiff, or surety, under the provisions of the Division Courts Act.

Place of trial, and change of venue.

8. Where the debt or money payable (*n*) exceeds one hundred dollars, and is made payable by the contract of the parties at any place named therein, the action may be brought thereon in the court holden for the division in which such place of payment is situate, subject however to the place of trial being changed to any other division in which the court holden therein has jurisdiction in the particular case (*o*).

(*n*) See notes to section 54, of Division Courts Act, in O'Brien's D. C. Manual, p. 44, &c., and section 2, *ante*.

(*o*) Section 62 of the Division Courts Act, provides that an action may be brought in the court holden in the division in which the cause of action arose, and we have seen that the words "cause of action" mean the

(2) To procure such change, an order to that effect is to be obtained by the defendant from the judge of the county in which the action is brought (*p*).

whole cause, or whatever the plaintiff must prove to entitle him to recover, that is, the contract and the breach. See O'Brien's D. C. Manual, p. 60, where this subject has already been fully discussed. In addition to the cases there referred to, there is a more recent decision to the same effect. A cheque was drawn by the defendant living in the Tenth Division Court of the County of York, payable to the plaintiff, on a Bank whose place of business was in the First Division Court of the same county. The cheque was dishonoured, and the plaintiff sued it in the First Division Court. But it was held that this court had no jurisdiction, as the whole cause of action did not arise in that 'Division The action should, under such circumstances, have been brought in the division in which the defendant resided (*King* v. *Farrell*, 8 Prac. R. 119).

This present section implies that without such legislation as this, an action could not, as a matter of course, be brought in the court holden for the division in which the place of payment is situate; but, while it enacts that it may be brought there, if the debt is so made payable in the contract (thus giving an additional right to the plaintiff, beyond those set out in note (*l*) on p. 59 of O'Brien's D. C. Manual), it also provides that the venue may be changed to another court, if the requirements of sub-section 4 (*post* p 27), can be complied with.

(*p*) The usual practice in the Superior Courts is first to take out a summons to show cause why the venue should not be changed, and in most cases such an application is strenuously opposed, as the plaintiff naturally brings his action where the venue is not local, in the court most suitable to himself. The intention of the Legislature in this section however, is not very clear, and a careful examination of the sections throws great doubt on the view that this intention was to place the practice under this section on the same footing as the practice of the higher courts.

It will be noticed that the right of the plaintiff to bring the action in the court named in section 8, is an innovation on the previous rule, and the right is contingent:

(1) Upon the debt exceeding $100;

(2) Upon the debt being made payable by the contract between the parties, at a place named therein; and subject

(3) To the right of the defendant upon a certain state of facts, to have the place of trial changed to one of the courts where, but for this innovation, it should have been brought.

That which is necessary to bring the case back to its original forum, is an order of a judge.

The statute directs that this order is to issue:

(3) The application for the order is to be made within eight days from the day on which

(1) If the application is made within a specified time;

(2) If an affidavit is made by a certain person and sets out certain facts, which are either within the knowledge of the defendant alone, or which cannot generally be controverted on an interlocutory application.

There is no intimation that the plaintiff is to have an opportunity of opposing the order, and what is of more importance, there is no discretion given to the judge to refuse the application if an affidavit is produced, complying with the statute.

Another reason for the view that a summons to shew cause was not contemplated is that the application may be made as late as within two days or three days, as the case may be, of the trial, which would not generally give the necessary time for this procedure.

These arguments seem to the writer to be very cogent. It may be said, however, that it would require a very clear expression of intention to take away the general right of every suitor to have an opportunity of objecting to any step which might be more or less detrimental to his interests. Judges will, it is thought, differ in their views on this point. But while it is a matter of practice of no very great moment in itself, it is one which should be discussed and settled as soon as possible, so that there may be uniformity of action in the different counties.

In counties where the judges hold that the plaintiff should have an opportunity of showing cause, it will be competent either to follow the practice at common law or the practice in equity. Under the former procedure a summons to show cause would be obtained from the judge upon the defendant filing the affidavit required by the Act. This summons may be made returnable on the day after the day of service, or at such other time as the judge might direct. The following are form of affidavits in use in the County of Simcoe whereon to found a summons to show cause why the place of trial should not be changed. (See subsec. 4, *post*, p. 27).

1. If made by the defendant himself:

(Style of Court and Cause.)

"I, of the of in the County of the above named defendant, make oath and say:

1. That on the day of 188 , I was served with the summons in this suit, and that I intend to defend the said suit.

2. That I have a good defence thereto on the merits.

3. That this action is brought to recover the sum of dollars, due upon a alleged to be by the said defendant , and payable at

4. That defendant reside at in the County of within the limits of the Division Court of said County.

5. That the cause of action, if any, in this case, did not wholly arise in the division in which this action is

the defendant who makes the application was served with the summons, where the service is

brought, but partly within the limits of the Division Court in the County of

6. That who material and necessary witness for the defence, reside at within the limits of the Division Court in the County of being the division in which the defendant resided (*or*, carried on business), when this action was brought.

7. That this application is not made for the purpose of delay.

8. That it will be more convenient and less expensive if this cause be transferred to and tried at the court holden in and for the division in the County of at the and that the dates of the next two sittings of such court are the day of and the day of respectively."

Sworn, &c.

2. If made by defendant's attorney or agent, it might be as follows:—

(*Style of Court and Cause.*)

"I, , of the of , in the county of , make oath and say:

1. That I am the attorney (*or* agent) for the above named defendant , who by reason of illness (*or, as the case may be*) unable to make this affidavit.

2. I am acquainted with the circumstances of this suit, and I say that the said defendant intend , as I am informed and verily believe, to defend the said suit.

3. That he ha a good defence to this action on the merits.

4. That this action is brought to recover the sum of dollars, due upon a alleged to be by the said defendant and payable at .

5. That at the time this action was brought the said defendant resided at within the limits of the Division Court in the said County of .

6. That the cause of action, if any, in this cause, did not wholly arise in the division in which this action is brought, but partly within the limits of the Division Court in the County of .

7. That who material and necessary witness for the defence, as I am informed and verily believe. reside at , within the division in which , the said defendant , resided (*or*, carried on business), at the time this action was brought.

8. That this application is not made for the purpose of delay, as I am advised and verily believe.

9. That it will be more convenient and less expensive if this cause be tried at the court holden in and for the division in the said County of , at the , and that the dates of the next two sittings of such court are the day of , 18 , and the day of , 18 , respectively.

10. That the summons in this case was served upon the defendant on the day of , 18 , and upon the defendant on the day of . as I am informed and verily believe."

Sworn, &c.

required to be ten days before the return; or within twelve days after the day of

If the judge holds that a summons to show cause is necessary, the following form might be used:

(Style of Court and Cause.)

"Let the plaintiff, his attorney or agent attend before me at my Chambers, at , on the day of next, at the hour of , to shew cause why an order should not be made herein to change the place of trial from the above named court to the Division Court of the County of , and all the papers and proceedings herein transmitted to the clerk of such last mentioned court, and why such order should not direct at what sittings of the court this cause should be tried, on grounds disclosed in the affidavit filed on this application.

Dated, &c. *Judge, &c.*"

Under the Chancery practice the course would be for the defendant to serve upon the plaintiff a notice in writing of his intention to apply for the order on a day named therein. Such a notice might be in the following form:—

(Style of Court and Cause.)

"Take notice that a motion will be made on next, at the hour of , at to the judge of this court for an order to change the plaec of trial herein, from the above named court to the Division Court of the County of , and to transmit the papers and proceedings herein to the clerk of such last named court, and to direct at what sittings of said last mentioned court this cause should be tried, and further take notice, that in support of such application will be read the affidavit of this day filed.

Yours, &c.,

Dated, &c.

To the above named plaintiff, and to , his attorney. } Defendant's attorney *or* , Defendant in person."

The affidavit required by sub-sec. 4, should be filed on the same day the notice is given, so that the plaintiff may have an opportunity of examining it.

The writer suggests that the procedure lastly referred to would be the more convenient, and also recommends that the defendant should at the same time as he serves the above notice, serve also a notice disputing the jurisdiction under section 14; for should he not do so, and should his application be refused, the question of jurisdiction would be determined against him by the operation of section 14. For form of notice, see O'Brien's D. C. Manual, p. 421.

The summons or notice should be served on the plaintiff personally or upon his attorney, should an attorney be acting for him, or in the mode provided by Rule 125 (see O'Brien's D. C. Manual, p. 304); and an affidavit of service prepared and produced to the judge when the time arrives for making the order. The plaintiff would then be entitled to

such service, where the service is required

urge such reasons as the circumstances of the case might warrant against the venue being changed; the onus of making out the case for a change being on the defendant. If the defendant's affidavit comply with the requirements of sub-sections 4 and 5, and be not successfully controverted by the plaintiff, the defendant will be entitled to his order. On the supposition that the plaintiff may be heard in answer to the application, it would be competent for him probably to show by affidavits that the cause of action did not wholly arise in the division in which the action was brought, or that none of the witnesses for the defence reside in the defendant's division (though it would not be likely that he could contradict the defendant on these points), or the plaintiff might be in a position to show that the application was made for the purpose of delaying the trial, or that a delay would endanger the recovery of the claim. The defendant's application could only succeed moreover on the assumption that he had a good defence to the action on the merits, so that if the plaintiff could establish the contrary beyond a peradventure, the application would fail, but the judge would not try the case on affidavit, and it would not as a rule be worth while for the plaintiff to go into the merits of the case, nor indeed would it be judicious.

In the higher courts there are various grounds on which such an application may be based which can not be taken in Division Courts; for example, a change may be had to avoid delay in the trial under certain circumstances; to secure a fair trial, in jury cases; to save expense and inconvenience, &c. But the only ground that can be alleged in Division Courts are those set forth in this section; it would not therefore be of any benefit to discuss the numerous cases that have been decided under the practice of the Superior Courts.

The order might be in the following form:—

(Style of Court and Cause.)

"Upon reading the summons granted and the affidavit of herein (*or if made on notice*), upon reading the affidavit of , filed herein, and defendant's notice of motion and on hearing the parties, I do order that the place of trial herein be changed from the above named court to the Division Court of the County of , and that all papers and proceedings in this cause be transmitted to the clerk of such last named court, And I further order that this cause shall be tried at the sittings of such court to be holden on the day of next, subject to all rights of postponement.

_____,

Dated, &c. *Judge, &c.*"

A difficulty may easily arise where there are two or three defendants residing in different divisions and neither of them where the action is brought. It would be quite possible, for anything in this section to the contrary, for one defendant to apply for an order under this section, and for such order to be made without

to be fifteen days or more before the return (*q*);

(4) The application is to be on an affidavit (*r*) that the applicant intends to defend the suit, that he has a good defence upon the merits, that the cause of action did not wholly arise (*s*) in the division in which the action is brought, and that the witnesses for the defence, or some of them, reside within the division in which the defendants, or one of them, resided or carried on business, at the time the action was brought, and that such application is not made for the purpose of delay; the date of the then next two sittings of the court to which he seeks to have the cause transferred is also to be shewn (*t*);

the knowledge of the other defendant. To obviate this, it would be well for judges, in cases where there are two or more defendants, to require proof of service of the notice of the application upon the defendant or defendants who take no part in the application. And notice of the order, changing the place of trial, if made, should also be served upon them as well as on the plaintiff. This of course would not be necessary in cases of proceeding by special summons, where no defence had been entered by such other defendant or defendants.

(*q*) The day of service is excluded from this computation. If the last day, that is, the eighth day, or the twelfth day, as the case may be, falls on a Sunday, the application must be made on the Saturday previous.

It will sometimes happen that the judge is absent on the last day for moving. In such case, it would meet the requirement of the statute if the papers were left for him at his chambers.

(*r*) The next sub-section speaks of the person who has to make this affidavit. As to its form, see *ante* p. 23.

(*s*) The meaning of the words "whole cause of action" has been explained in note (*n*) to section 62 of the Division Courts Act (see O'Brien's D. C. Manual, p. 60). This provision would, therefore, be applicable in cases of the class there alluded to, viz., where the contract is made in one place and the breach of the contract occurs in another. See also note (*o*) to section 8, *ante* p. 21.

(*t*) So that the judge may give the direction required by sub-section 6.

(5) The affidavit (*u*) must be by the defendants, or one of them, or by their or his attorney or agent (*v*), in case satisfactory reasons are

(*u*) For form of affidavit, see *ante* p. 23.

(*v*) The question arises whether or not the "agent" here spoken of is the professional agent of the attorney, or a professional agent, such as a managing clerk of an attorney, or some person unlicensed as an attorney acting on behalf of the defendant.

It will be remembered that section 81 of the Division Courts Act says, that at the trial "the defendant shall on the day named in the summons, either in person or by some person on his behalf, appear," &c. Section 84 of the same Act allows "any person" to appear *at the trial* as agent and advocate for any party. It is clear that these sections do not cover the point, as they refer only to the day of trial. It will also be noticed that the words are similar to those used in sections 6, 14 and 16. The words used in these places seem to point to the use of the word "agent" (in its connection with the previous word, which refers to a professional man), as being one *of the same class* as a counsel or attorney, and so it may be intended to refer to the legal agent of a lawyer residing in a different place, or to the managing clerk or agency clerk of a lawyer, positions well understood, of course, by the legal members of the Government having charge of this legislation. The same or similar words are used in various places in the Common Law Procedure Act in reference to the attorney in a suit and his agent in some other county town or in Toronto. They are also used in the sections of this Act referring to appeals, and in relation to matters which must of necessity be conducted by professional men.

The previous sub-section requires "a good defence upon the merits" to be sworn to. This is an allegation that could not be made without consultation with a lawyer, inasmuch as a layman would not be presumed to have sufficient knowledge of law to know whether or not, under certain circumstances, the facts would form a ground of defence.

A consideration of these points leads strongly to the conviction that an affidavit made under this section by one who is not the defendant or his attorney, nor the agent of the attorney, nor a professional agent of the defendant, would not be sufficient to found an order for an application under the section before us.

There is still another reason for thinking that this is the correct view. Section 27 of R. S. O. cap. 140, enacts as follows:—"In case any person, unless himself a plaintiff or defendant in the proceeding, commences, prosecutes or defends, in his own name or that of any other person, any action or proceeding in any court of law or equity without being admitted and enrolled as aforesaid, he shall be incapable of recovering any fee, rewards or disbursements on account

given (*w*) why the affidavit is not made by a defendant;

(6) The order shall direct at what sittings of of the court the suit shall be tried (*x*) subject to all rights of postponement as in other cases, and shall be attached to the summons and other proceedings in the suit by the clerk, who shall forthwith transmit the same to the clerk of the court in which the suit is by such order direct-

thereof; and such offence shall be a contempt of the Court in which such proceeding has been commenced, carried on or defended, and punishable accordingly." And section 25 of the same Act provides that the Court may commit any unqualified person who attempts to practise under the cloak of an attorney to any common gaol for any term not exceeding one year. These are some of the provisions which are intended to carry out in its entirety the law (subject, of course, to sections 81 and 84 of the Division Courts Act), that unless admitted and duly qualified to act as an attorney or solicitor, no person shall act as such in any Superior or Inferior Court of Civil or Criminal jurisdiction, in law or equity, or before any Justice of the Peace or Commissioner therein, prosecute or defend any suit for another.

It cannot be said that these provisions conflict with the sections under review, and it cannot be assumed that the later enactment is in any way intended to repeal the former. They should both be interpreted so as to give full force to each, and this can be done without doing violence to either, by supposing that the word "agent" means a person qualified to act as such under the Act last referred to, and none other.

(*w*) It is not clear what is meant by "satisfactory reasons." It must necessarily be a matter of discretion with the judge, each case depending on its own merits. *Prima facie* the defendant should make the affidavit. Probably an affidavit by "his attorney or agent" instead would be considered satisfactory if he were absent from the country or at an inconvenient distance, or too ill to attend to business, or if he had no knowledge, or an insufficient knowledge, of the facts of the case himself, and his attorney or agent were familiar with them. The reason why an affidavit is not made by the defendants would generally, as a matter of convenience, appear in such affidavit. This, however, is not a necessity, and under some circumstances the reasons might sufficiently appear in other ways.

(*x*) For form of order see *ante* p. 26.

ed to be tried (*y*) and shall enter a minute thereof in his procedure book;

(7) Upon receipt of such order and other papers by the clerk of such last mentioned court, he shall enter the suit and proceedings in his procedure book;

(8) All the papers and proceedings in the cause thereafter, shall be entitled and had and carried on as though the suit had originally been entered in the said last mentioned court (*z*).

(9) It shall be the duty of the defendant obtaining the order forthwith to serve, or cause to be served, a copy of the same upon the plaintiff or his agent in the same manner as summonses are required to be served under the Division Courts Act (*a*).

(*y*) A copy of this order is to be served on the plaintiff or his agent in the same manner as summonses are required to be served (sub-sec. 9). When this has been done, and an affidavit of service made, it should be given to the clerk for transmission with the rest of the papers.

It is presumed that a clerk could not refuse to transmit these proceedings on the ground that fees were due him, which he ought to have required the plaintiff to have paid under the powers given in sec. 49 of the Division Courts Act; it is the defendant's right to have the proceedings removed.

(*z*) There is no provision made for any further time for the defendant to give such notices as the nature of his defence may require. He must therefore give all necessary notices irrespective of the application to change the place of trial.

(*a*) See note (*f*) to section 70 of Division Courts Act (see O'Brien's D. C. Manual, p. 68). See also section 62 of this Act, which provides for substitutional service.

As to the service of a summons generally it is for the purpose of bringing the person served before the court. If therefore a notice of defence is put in by a defendant, he cannot object to an irregularity in the service (*Tilton* v. *McKay*, 24 C. P. 94). And on the same principle it has been the practice of many County judges where a person has been sued in a representative capacity, and it turns out at the trial that his liability is personal, to amend the proceedings to meet the case.

When money made payable out of the Province.

9. When the debt or money payable (*b*) exceeds one hundred dollars, and is by the contract of the parties made payable at any place out of the Province of Ontario, the action may be brought thereon in any Division Court, subject, however, to the place of trial being changed upon the application of one or more of the defendants as provided by the next preceding section (*c*).

Trial may by consent be in any division.

10. Notwithstanding anything in the Division Courts Act contained, any suit within the jurisdiction of the Division Court (*d*)

(*b*) These words are in effect the same as the words "money demand" in section 2.

(*c*) But for this section the plaintiff would only be entitled to sue in the division wherein the defendants or one of them resided. It has apparently been thought proper by the Legislature to give the plaintiff under this increased jurisdiction the more extended powers he would have had under the practice in County Courts, wherein formerly an action for an amount exceeding $100 must have been brought. But the convenience of the defendant is nevertheless considered, as the place may be changed at his instance if his witnesses or some of them reside in the division where he resides or carries on business, as provided by section 8, sub-sec. 4, *ante*.

(*d*) This means any suit which is within the jurisdiction of these Courts, both as to subject matter and as to amount. The section is intended, on a consent being given, to enable parties to bring a suit in "any Division Court," *i. e.* in a court where but for this provision the suit could not have been brought. Consent, it has been said, cannot give jurisdiction, though we have seen that there may be an acquiescence in it which is made the same thing (see note (*m*) to section 53 of Division Court Act in O'Brien's D. C. Manual, p. 40).

We have also seen that if a person sues in a wrong court and proceeds to judgment with the acquiescence of the defendant as to jurisdiction, the strict right to a prohibition is gone (see *Ib.* p. 460). It was there suggested that the proper course for defendant intending to object to the jurisdiction would be to give a notice to that effect, to be followed up by a further objection at the trial. This course is, by section 14 of this Act, now required in all cases of this kind. So that, generally speaking,

may be entered, tried and finally disposed of by the consent of all parties in any Division Court (*e*).

When suit entered in wrong Court by mistake.

11. If by mistake or inadvertence, a suit shall be entered in the wrong Division Court which might properly have been entered in some other Division Court of the same or any other county, the cause shall not abate as for want of jurisdiction, but on such terms as the judge shall order (*f*), all the papers and proceedings in the cause may be transferred to

there is not much practical necessity for such a provision as the one before us. But by means of it, if consent to the jurisdiction as regards the Court in which the action is brought be once given, there is an end of any possible contention on the point, and no necessity for the notice spoken of in section 14. (See note (*k*) thereto).

(*e*) This section apparently contemplates the consent being given before or at the time of the entry of the suit. The words are "entered, tried and finally disposed of;" not "entered, tried *or* finally disposed of." Hence it would seem that there would be no right even to *enter* the suit where it manifestly appeared that the court had ordinarily no jurisdiction without this consent.

It is the opinion, however, of many of the judges, that the consent may be given at any time before trial. It would undoubtedly be a convenient practice to have the consent given at the earliest stage, and put in a binding form, so that no objection could afterwards be taken. The consent should be in writing, and filed with the clerk, who should note it in his Procedure Book.

As to the form, the following would be sufficient :—

(*Style of Court and Cause.*)

"We hereby consent and agree that this suit may be entered, tried and finally disposed of in the above named Court, pursuant to the provisions of section 10 of the Division Courts Act, 1880.

Dated, &c.

——— Plaintiff in person.
or ——— Plaintiff's Attorney.
And ——— Defendant in person.
or ——— Defendant's Attonery."

(*f*) That is, doubtless, the judge of the county in which the action was brought. The judge would of course not act under the section if there were any question as to the *bona-fides* of the person seeking the transfer.

any Division Court, having jurisdiction in the premises (*g*), and shall become proceedings thereof as though the cause were at first properly entered therein, and the same shall be continued and carried on to the conclusion thereof as though the suit had originally been entered in the said last mentioned court.

Court where suit may be tried to have full power.

12. When it is by this Act provided that a claim or suit may be entered, or an action brought, or that any person or persons may be sued in any Division Court, or that a suit may be transferred or changed to any other court, such court shall have jurisdiction in the premises, and all proceedings may be had and taken both before and after judgment in or relating to any such claim or cause as may now be had and taken in or relating to any claim or cause which has been lawfully entered

(*g*) This section gives a privilege to be taken advantage of at any stage of the cause, either with or without notice from a defendant, and any action taken under it will generally be initiated by him under section 14. It might possibly be competent for a defendant to make an application for the transfer of the cause. There would not often perhaps be any reason why he should seek to prevent an action against himself abating from want of jurisdiction, but there might be circumstances which would render an application by him under this section desirable and possible. Supposing then a wish on the part of a plaintiff to correct his mistake, his course would be first to state the facts on affidavit for the information of the judge, and then to apply either for a summons to shew cause why the suit should not be transferred to the proper court, or for an order to the like effect, founded on a notice of such intention to be given to the defendant or his attorney. The practice would be similar to that on an application for a change of the place of trial (see *ante* note (*p*) at p. 22) and the forms there given could easily be adapted to the requirements of this section.

in the court holden for the division in which the cause of action arose, or in which the defendant or any one of several defendants resided or carried on business at the time the action was brought.

Endorsing upon summons.

13. There shall be endorsed upon every summons a notice informing the defendant that in any case in which an order may be made changing the place of trial, application must be made to the judge within eight days after the day of service thereof (where the service is required to be ten days before the return), or within twelve days after the day of such service (where the service is required to be fifteen days or more before the return) (*h*).

Notice where jurisdiction of Court disputed in garnishee cases (*i*).

14. In all cases where a defendant, primary debtor or garnishee intends to contest the jurisdiction of any Division Court to hear or determine any cause, matter or thing in such court, he shall leave with the clerk of the court, within eight days after the day of service of the summons on him (where the service is

(*h*) As to the order for changing the place of trial, see section 8 and notes.

The notice here referred to should be on every summons, whether special or ordinary, The reference as to the change of place of trial is evidently to section 8, which refers to cases which would ordinarily be commenced by special summons. But this is not necessarily so; see also Rule 31.

The form of notice would simply follow the wording of the section.

(*i*) This marginal reference is manifestly wrong, as the section is not confined to garnishee cases.

required to be ten days before the return), or within twelve days after the day of such service (where the service is required to be fifteen or twenty days before the return), a notice to the effect that he disputes the jurisdiction of the court (*j*), and such clerk shall forthwith give notice thereof to the plaintiff, primary creditor, or their attorney or agents in the same way as notice of defence is now given, and in default of such notice disputing the jurisdiction of such court, the same shall be considered as established and determined, and all proceedings may thereafter be taken as fully and effectually as if the said suit or proceeding had been properly commenced, entered or taken in such court (*k*).

(*j*) See note (*e*) to section 10.

The form of notice might be to the following effect :—

(*Style of Court and Cause*).

"Take notice that I dispute the jurisdiction of this court, on the ground that *(here state the ground)*. [See Form P., p. 421 of O'Brien's D. C. Manual.]

Dated, &c.

——, Defendant. *or*
——, Defendant's attorney.

To the above plaintiff, and to the clerk of said court."

The statute does not require the defendant to give the ground of objection, but it would be very desirable that this should be done, so as to prevent the necessity of an adjournment, which might, under certain circumstances, reasonably be asked for by the plaintiff, if no information on the subject were given.

(*k*) A hasty glance at the words used in this section, might lead to the supposition that the mere omission to give the notice spoken of in this section would establish and determine the jurisdiction to the court to the extent of the claim made, although that claim might be largely in excess of its jurisdiction; so that a judge might be compelled, by operation of this section, and by reason of the defendant not giving a notice disputing the jurisdiction, to adjudicate upon a claim in a Division Court which otherwise could only be sued in one of the Superior Courts.

Place of trial in suits against clerk or bailiff.

15. Notwithstanding anything in the Division Courts Act contained, any clerk or bailiff of a Division Court may be sued in the court of an adjoining county, the place of sitting whereof is nearest (*l*) to the residence

The writer submits that such a view of the operation of this section is erroneous and will not bear the test of close examination. It is a well established principle that an inferior Court can have no jurisdiction beyond that expressly given it by statute. We have seen, moreover (see O'Brien's D. C. Manual, p. 39), that statutes which relate only to practice and procedure "cannot be called in aid for the purpose of giving a jurisdiction which cannot be shown to exist independently" (*Ahrens* v. *McGilligat*, 23 C. P. 174).

This section, it will be observed, is one of several, beginning with section 9, and ending with section 15, affecting the locality where suits may be entered or tried, and the change of the place of trial from one to another. The only question in these sections, so far as jurisdiction is concerned, is as to the *local forum* of jurisdiction; there is nothing said as to the *amount* of jurisdiction. This had already been definitely set forth in previous enactments. This section does not refer to the question of amount at all, and there is only, if anything, an implication to countervail a precise, express and exact definition of the general jurisdiction of these courts. It is much more reasonable to conclude that this section 14 refers only, as do those by which it is immediately surrounded, to the question of locality.

It is also thought that the wording the section when examined, leads to the same conclusion. It speaks of a defendant, &c., contesting "the jurisdiction of any Division Court to hear or determine any cause, matter, or thing, in *such* court," and again, in the last sentence, the words imply that the intention was to cure, not a defective jurisdiction as to the amount of the claim, but an improper commencement or entry of the suit, or proceeding taken "*in such court.*"

Again, even if there were any weight in the view that the mere omission to give the notice would give jurisdiction to any sum the plaintiff chose to claim, it would only amount to a jurisdiction *by consent*; but we find that this is already provided for by the express enactment of section 10, which requires the active consent of all parties to the suit. It surely was not necessary by a side-wind to do that which had already been expressly provided for.

(*l*) That is, nearest "as the crow flies," which is the interpretation given in several of the cases. No other mode of measurement would be certain or exact. This question was discussed in a recent case not yet reported (*In re McIntosh*) on a proceed-

(*m*) of the defendant without the county in which he holds his office as such clerk or bailiff (*n*). And upon a transcript of any judgment which may be recovered against any clerk or bailiff in any such suit being sent to and received by the clerk of the court of any division adjoining the division for which the defendant was or is clerk or bailiff in the county in which the last named division is situate with a certificate of the amount due on such judgment as provided by the one hundred and sixty-first section of the Division Courts Act, such proceedings for enforcing and collecting the judgment by way of execution and otherwise may be had and taken in the Division Court to which such transcript has been so sent by the officers thereof as may be had or taken for the like purpose upon a judgment regularly recovered in any Division Court (*o*).

Enforcing judgment.

ing by prohibition from a Division Court in Elgin. The defendant's residence was nearer as the crow flies to the place where the court was held than it was to the place in the division to which the defendant should have been summoned, although the distance by the road was greater. The county judge had taken evidence of this fact. The judge in chambers, on application for prohibition under these circumstances, held himself precluded from interfering.

(*m*) As to the meaning of the word "residence" see O'Brien's D.C. Manual, p. 61.

(*n*) This gives additional privilege to the plaintiff. Under section 65 of the old Act, the officer might be sued, at the option of the plaintiff, in the court of his own division, or in the court of any next adjoining division in the *same* county. It was thought proper by the Legislature to allow the plaintiff the right of having the case tried before the judge of another county as well.

(*o*) This provision is necessary to enable an execution to issue and be

Costs.

16. Where in a contested case (*p*) for more than a hundred dollars, a counsel or an attorney or agent (*q*) has been employed by the

enforced by some officer of the county in which the defendant resides, the jurisdiction of bailiffs not extending beyond their own counties, except under section 62 of the Div. Courts Act.

(*p*) In the taxation of costs in the Superior Courts, the test whether or not the unsuccessful party is liable to payment of a counsel fee, is not, whether the case has been actually contested in court, but whether it has been entered for trial, and the counsel has presumably spent time in preparing for it. And this is quite reasonable for the time occupied during the progress of the case before the judge represents generally a very small portion of the time actually lost by counsel by reason of holding the brief. And so if a suitor pays a fee to a lawyer in a Division Court case in which a notice of defence had been filed, there should be no reduction (except as a matter of grace) simply because the case is settled in court, or is then abandoned either as to the claim or defence, or requires proof of a formal kind only.

If the plaintiff is notified by the defendant that the latter intends to defend the action, it would be quite proper for the former immediately thereupon to engage the services of counsel, and it would be unreasonable that he should be a loser if the defendant should subsequently withdraw from a contest which he had initiated, and the same argument holds good in the converse case. It is thought, therefore, that the words "contested case" mean a case wherein the defendant has not only formally announced his intention of contesting the claim by the ordinary notice, but a case where the parties have evidenced such intention by conduct or proceedings sufficient to convince the judge that a contest between the parties has actually existed, although it may not have culminated in an actual trial before him.

There must be some latitude allowed to the judge, and it would be impossible to detail all the circumstances under which he would be justified under a reasonable interpretation of this section in exercising his discretion in the allowance of the fee.

It is somewhat remarkable, and an instance of not very thoughtful legislation, that this provision is not applicable to actions of tort and replevin, the jurisdiction in which does not extend to $100, but which, in general, involve more difficult questions of law, and are of a more complicated nature than matters of debt or account ascertained by the signature of the defendant.

(*q*) The interpretation which should be given to the word "agent" has already been discussed at some length in note (*v*) to sec. 8, subsec. 5. That section did not refer to the conduct of a case in court, but most of the reasons there advanced have weight in connec-

successful party in the conduct of the cause or defence, the judge may, in his discretion, direct a fee of five dollars, to be increased, according to the difficulty and importance of the case, to a sum not exceeding ten dollars, to be taxed to the successful party, and the same, when so allowed, shall be taxed by the clerk and added to the other costs.

APPEALS IN SUCH CASES.

17. In case any party to a cause (*r*), wherein the sum in dispute upon the appeal exceeds one hundred dollars exclusive of costs (*s*), is dissatisfied with the decision of the judge, upon an application for a new trial, he may appeal to the Court of Appeal (*t*), and, in Appeal.

tion with the words in the present section 16. It is true that *any person* may appear at the trial as agent for a suitor, but it does not necessarily follow that the suitor is entitled to claim a fee for *any person* who may conduct his case, unless such person be one of those referred to in the section before us. It is certainly thought that a judge would be exercising a reasonable and just discretion by refusing to allow a fee under this section, except to a barrister or the attorney for the suitor, or the legal agent of such attorney—possibly also to the managing clerk of the attorney.

(*r*) The interpretation to be put on these words will be seen by reference to section 34 of the County Courts Act (*post* p. 42). The provision there referred to was the result of several changes in the law tending towards allowing the party beneficially interested to appeal from an adverse judgment. (See Harr. C. L. P. Act, p. 610, note *k*.)

(*s*) See note (*f*) to section 2, subsection 2, as to the meaning of the words "the sum in dispute upon the appeal, exclusive of costs."

(*t*) There can, therefore, be no appeal until an opportunity has been given to the judge to reverse his decision on a second trial, should he so desire; but whatever his ruling may be on the application for a new trial, the unsuccessful party *on such application* has a right to appeal—not necessarily the party who was unsuccessful at the trial. If on a second

such case, the proceedings, in and about the appeal, and the giving and perfecting of the

trial, the judgment is the same, and the unsuccessful suitor wishes to take the opinion of a higher court, he must again apply for a new trial; and if this is granted a second time, he is as far off an appeal as ever, as he must then go to trial a third time, though this is an unlikely case. But should a new trial be refused, he can then proceed under this section.

It is quite possible that a new trial may be refused, on grounds which do not touch the merits of the case, or the point of law involved therein; for example, the materials on which the application is based may be defective, or the application may be made too late. Can there be an appeal in such case, neither the merits nor the law being involved? The Act is silent on this subject, and the wording is apparently large enough to include all cases. This is not the case in the higher courts. There can, for example, be no appeal from a County Court on a point of practice. The right is there limited to "points reserved, or points of law arising upon the pleadings, or respecting the reception or rejection of evidence, or in reference to the judge's charge to the jury, or on motions for nonsuit, or new trial, in arrest of judgment or judgment *non obstante veredicto*. (R. S. Ont. cap. 43, sec. 34); and an appeal will not be allowed where the decision turns wholly on the evidence and involves no points of law (see cases cited in Rob. & Jos. Dig. p. 848); and so it has been held, that the appellate court will not interfere where only costs are involved, or on a question of amendment, or as to the right to begin, or in any matter of simple discretion, &c. (*Ib.* p. 849.) It was not, perhaps, intended that there should be appeals from decisions in Division Courts on questions which would not be appealable in County Courts or Superior Courts. But the section is so carelessly worded as to leave grave doubts on the subject. The latter part of it, which provides that "the proceedings in and about the appeal, &c., shall be the same as on an appeal from the County Court," do not help, as the question is not as to the *proceedings*.

The words used are very comprehensive, and include more than those used in the County Courts Act. We are, therefore, inclined to think that the words "dissatisfied with the decision of a judge" would be construed as referring to his decision on the merits of the case, and on the law involved, including the reception or rejection of evidence, and on such question as might have come up for adjudication on the application for the new trial, even although such question might have been as to the sufficiency of the materials then produced, or as to whether there were delay on the part of the applicant, &c.; in fact, any matter which would legitimately weigh with the judge in forming his decision as to whether a new trial should or should not be granted.

Section 21, which would seem at

security, shall be the same as on an appeal

first glance to throw some light on this subject, does not however do so; it gives the Judge of appeal power "to give any judgment, and make any order which ought to have been made," but adds that he shall give such order or direction to the court below "as the law requires;" one would rather have expected to have seen "as the justice of the case requires." One sentence indicates that the judge of appeal should decide as to the merits of the whole case, whilst the other would seem to show that he is limited to the legal question involved. It may be, however, that the words, "as the law requires," do not refer to the *law* of the case, as distinguished from the *equity* of it, but that they are equivalent to such words as "according to the statutes in that behalf," or, to express it otherwise, that the words "as the law requires," refer to the nature of the adjudication required by section 54 of the Division Courts Act; that is an adjudication based, not on strict law, but on equity and good conscience. (See note (*v*) thereto at p. 48 of O'Brien's D. C. Manual. And see also Public Schools Act, R. S. O. cap. 203, ss. 7, 13.)

It is difficult to prophecy what view will be taken by the judges of the Court of Appeal as to the powers conferred on them by sections 17 and 21. But it is thought that under the words "to give any judgment, and make any order which ought to have been made," they will feel constrained to put themselves, as it were, for the time being, in the position (so far as the record will enable them to do so) of the judge who tried the cause, and consider the whole case, so as to be able to give full and explicit directions for a complete adjudication of the questions involved, not confining themselves to the particular question upon which the application for the new trial hinged, nor to such merely legal point as might present itself, but go into the merits of the case, so as to be in a position to order that to be done, which should of right be done between the parties according to equity and good conscience. It will doubtless often happen that the record is not sufficient to enable this to be done satisfactorily. In such case it would be necessary to apply for further information, or to order evidence to be taken on some particular point requiring elucidation.

The words "dissatisfied with the decision of a judge" are not to be read in connection with the words "upon an application" so as to make the subject of appeal his ground for granting or refusing a new trial; that is, that these latter words simply indicate the stage of the suit when an appeal may be had.

It is not necessary to discuss at length the principles which govern judges of appellate courts in relation to cases coming before them, as they would be of no practical importance to those concerned in the administration of justice in Division Courts. It may, however, be as well that suitors should understand that an appeal on any question which involves any conflict of evidence is not likely to succeed as against the opinion of the

from the County Court (*u*), except where otherwise provided by this Act, and the terms "party to a cause" and "appellant" in this section and hereafter used, shall have the meaning attached thereto in and by section thirty-four of the County Courts' Act.

See p. 39, note (*r*).

judge who heard the *viva voce* testimony of the witnesses, unless the appellant "can show irresistibly that the opinion of the judges on the question of fact was not only wrong, but entirely erroneous" (*Gray* v. *Turnbull*, L. R. 2 Sc. App. 54). The courts lay great stress upon the greater knowledge a judge has of the truth or falsity of the testimony from observing the character and demeanour of the different witnesses.

(u) The sections of the County Courts Act which are applicable are as follows:—

34. The terms "party to a cause" and "appellant" hereinafter used, shall include persons suing or being sued, in the name of others, though not mentioned in the record, and persons on whose behalf or for whose benefit any suit is prosecuted or defended, as well as parties named in the record. (33 V. c. 7, s. 13. See 27 V. c. 14, s. 1.)

37. The appellant shall give or cause to be given to the opposite party security either

(1.) By a bond, executed by two persons whether named as sureties or as parties interested or otherwise, in such sum as the judge of the court appealed from may direct, conditioned that the appellants shall abide by the decision of the cause by the Court of Appeal, and pay all sums of money and costs, as well of the suit as of the appeal, awarded and taxed to the opposite party: or,

(2.) By paying into the court appealed from, in the manner provided by law, within the time herein limited, for the perfecting of an appeal bond, the sum of four hundred dollars, or such other sum as the judge may direct. (C. S. U. C. c. 15, s. 68; 27 V. c. 14, s. 1; 33 V. c. 7, s. 13; 39 V. c. 7, s. 6.)

38. In case of security being given by bond, the parties executing the same shall justify to the amount of the penalty of the bond by affidavit annexed thereto, in like manner as bail are required to justify. (C. S. U. C. c 15, s. 68; 33 V. c. 7, s. 13.)

39. Such bond and affidavit of justification, and an affidavit of the due execution of the bond shall be produced to the judge, to be approved of by him, and upon being approved of, shall be filed in the office of the court appealed from, until the opinion of the Court of Appeal has been given, and shall then be delivered to the successful party. (C. S. U. C. c. 15, s. 68; 33 V. c. 7, s. 13.)

40. In case security is given by deposit of a sum of money in court, such sum shall remain in court as

18. Any judge of the County Court of the county in which the cause was tried, on the application of the person proposing to appeal (*w*), his counsel, attorney or agent shall stay the proceedings in the cause (*x*) for a time not

Stay of Proceedings.

security for the payment of all sums of money and costs, as well of the suit as of the appeal, awarded and taxed to the opposite party. (39 V. c. 7, s. 6).

(*w*) What is "any party to a cause," is defined by section 34 of the County Courts Act, (see *ante* p. 42).

The first step in an appeal from one of the Superior Courts is a notice of appeal; but there is no such requirement in appeals from County Courts; and by the last section the proceeding in and about appeals, &c., shall be the same as on County Court appeals, except when otherwise provided by this Act. But it will be noticed that section 19 which provides for the appointment of an agent speaks of the service upon him of "the notice of appeal, and all other papers *thereafter* requiring service." There is certainly a notice spoken of in section 21, which however is not a notice of appeal, but a notice of setting down for argument, and besides this notice is at the end of the proceedings, and not at the beginning, as the notice mentioned in section 19 would seem to be. It would therefore be safe to give a notice of intention to appeal. It certainly would be a convenient and proper practice. It might be in the following form:

(Style of Court and Cause.)

"Take notice that it is the intention of the said plaintiff (or defendant) to appeal from the judgment herein, on an application for a new trial, to the Court of Appeal, pursuant to section 17 of the Division Courts Act, 1880.

To the above
Dated, etc.

Yours, etc.,
in person
or by his attorney,
or his agent."

(*x*) It is not said whether an affidavit is necessary, but it would be more convenient to the judge, and he would probably require to be filed a short affidavit, showing the nature of the claim, the fact of judgment having been given adversely to the appellant on an application for a new trial, the amount of the judgment, and the amount in dispute on the appeal, exclusive of costs, the desire and intention of the applicant to appeal, and any other facts which the circumstances might require. The order would be *ex parte*, and in a proper case would go as a matter of course. It might be in the following form:—

(Style of Court and Cause).

"Upon reading the affidavit of (*the appellant himself, or his attorney or agent*), and upon hearing the (*appellant or his attorney or agent*), I do order that proceedings in this cause be stayed for ten days from the day of being the day of giving judgment on an application for a new

exceeding ten days from the day of giving judgment on the application for a new trial, in order to afford the party time (*y*) to give the security required to enable him to appeal (*z*).

trial herein, in order to afford the said time to give the security required to enable him to appeal. And I further order and direct that such security shall be a bond in the sum of $ or that the sum of $ be paid into Court."

Dated, &c.

A copy of this order must be served at once on the opposite party, or on the person named for that purpose in section 19. If no person has been named the notice may be left with the clerk of the court where the suit was tried (sec. 19).

(*y*) The statute gives no directions as to the time within which this security must be given, but the practice relating thereto must be the same as on an appeal from the County Court (sec. 17). The proceedings, however, are in some respects necessarily different inasmuch as in County Court cases a formal judgment has to be entered up before execution can be issued, whilst in Division Courts the judgment is contemporaneous with the verdict or finding of the judge. In the County Court if the security be not perfected within the time limited, the successful party may sign judgment and issue execution. It would be highly undesirable that there should be any unnecessary delay; and therefore it is suggested that the proper rule would be that no bond should be allowed after the ten days given by the statute has expired. It is not well to encourage or facilitate appeals. It is much more desirable that there should be a speedy end to litigation. The ten days give ample time to the appellant to complete his appeal.

(*z*) The security must be that provided by section 37 of the County Courts Act (*ante* p. 32), that is, either by bond or by deposit of money.

If the appellant desires to take the latter course he can pay $400 to the clerk of the court, or such other sum as the judge may direct, in which case he must get an order from the judge for that purpose on bringing before him such facts as would warrant a reduction of the amount.

If he elect to give a bond, he must get a direction from the judge as to the amount to be named in it (sec. 37 of C. C. Act, *ante* p. 42, and see form of order (*ante* p. 43), and then prepare a bond to be executed by the appellant and by two persons who may not be interested as parties.

This bond is usually executed by the appellant, as well as by his sureties, though this does not appear, from sections 37 and 38 of the Act referred to, to be strictly necessary. It may be in the following form:

"Know all men by these presents that we (*naming all the obligors with their place of residence and additions, the appellant being one of them*) are jointly and severally held and firmly bound unto (*naming the respondent*

19. Upon any application for a new trial in Agent for service.

with his place of residence and addition) in the penal sum of dollars; for which payment well and truly to be made we bind ourselves and each of us by himself, our and each of our heirs, executors, and administrators respectively by these presents.

Dated this day of 18 . Whereas the said (*appellant*) is dissatisfied with the decision of the Judge of the County Court of the County of on an application for a new trial in a certain cause in the Division Court of the County of wherein the (*appellant or respondent, as the case may be*) was plaintiff, and the said (*appellant or respondent, as the case may be*) was defendant, and desires to appeal from such decision to the Court of Appeal;

And whereas the sum in dispute on such appeal exceeds one hundred dollars, exclusive of costs;

Now the condition of this obligation is such that if the said (*appellant*) do and shall abide by the decision of the said cause by the Court of Appeal or a judge thereof, and pay all sums of money and costs as well of the suit as of the appeal awarded and taxed to the opposite party, then this obligation to be void, otherwise to remain in full force.

Signed, sealed and delivered in the presence of } "

Sec. 38 of the County Courts Act directs that the parties executing the bond shall justify by affidavit to the amount of the penalty of the bond in like manner as bail are required to justify. A form of such affidavit is given in County Court Rule 84, and may be adapted to the present section, as follows :—

(Style of Court and Cause.)

" I, , of, &c., make oath and say :

1. That I am one of the sureties for the above plaintiff (*or* defendant) in this cause in the annexed bond mentioned.

2. That I am a householder (*or* freeholder, *or as the case may be*) residing at (*give particulars*).

3. That I am worth property to the amount of dollars (*the amount of the penalty of the bond*) over and above what will pay all my just debts (if *bail or security in any other action add* and every other sum for which I am now bail or security).

4. That I am not bail or security for any plaintiff or defendant except in this action (*or if he is, add*, except for the sum of $).

Sworn, &c. "

There must also be an affidavit of execution, which may be as follows :

(Style of Court and Cause).

" I, , of &c., make oath and say :

1. That I was personally present and did see the annexed bond duly signed, sealed and delivered by the obligors therein named.

2. That I am a subscribing witness to the execution of the said bond by the said parties, and that the signa-

Agent for service.

any cause wherein either party may appeal (*a*) each party to the suit (*b*) shall leave with the judge by whom the application is heard, a memorandum in writing of the name of some person resident within the county town of the county or united counties in which the cause was tried, with his place of abode (*c*), upon whom the notice of appeal (*d*) and all other papers thereafter requiring service, may be served upon him, and service upon such person, or, in

ture " " affixed thereto as a witness is in my proper hand-writing. Sworn, &c."

The respondent should have an opportunity of objecting to the sufficiency of the bond; and to this end the appellant should serve a notice upon the opposite party that he will, on a day named, apply to the judge of the court at a certain hour and place for the approval of the bond, and in his notice state the names, residences, and additions of the sureties.

On the day named in the notice the appellant or his attorney will apply to the judge to have the bond approved. The opposite party can then take exception to the sufficiency of the bond, or to the sureties, setting out by affidavit any objection that may not be apparent on the face of the document.

Should the bond be held to be sufficient, the judge will mark it approved, and it must then be filed in Court, until such time as the appellant might, if successful, apply to have it cancelled, or until the respondent might, if necessary, obtain it to sue upon.

(*a*) That is in a case "wherein the sum in dispute upon the appeal exceeds $100, exclusive of costs" (sec. 17).

(*b*) See note (*r*) to section 17.

(*c*) This memorandum, is inconveniently enough to be left "with the judge." It does not say what he is to do with it; but he would probably give it to the clerk, to be filed with the papers in the suit.

It is not apparently intended that this "person" should necessarily be an attorney, though it would probably be so in most instances, at least in places where they are to be found.

(*d*) See note (*w*) to section 18.

It is thought that the notice here referred to must be a notice of intention to appeal, not the notice of setting down the appeal for argument referred to in section 21; for it will be observed that this section 19 goes on to speak of "all other papers *thereafter* requiring service." The notice spoken of in section 21 is one of the last requiring service in the course of an appeal.

his absence, at his place of abode, shall be sufficient service thereof; and, in the event of failure to leave such memorandum by either party, all papers requiring service upon him may be served upon the clerk of the Division Court where the suit was tried, or left at his office, for the person so failing to leave such memorandum, and such service shall be good service. The clerk shall, in such case, forthwith mail, by registered letter, all such papers so served upon him to the person entitled to the same (*e*).

Evidence, &c., to be certified.

20. Upon the bond being being approved by the judge, or the deposit being paid into court, the clerk of the court in which the suit is pending, shall, at the request of the appellant, his counsel, attorney, or agent, furnish a duly certified copy of the summons with all notices endorsed thereon, the claim, and any notice or notices of defence, and of the evidence and all objections and exceptions thereto, and of all motions or orders made, granted or refused therein, together with such notes of the judge's charge as have been made, the judgment or decision when in writing, or the notes thereof, and all affidavits filed or used in the cause, together with all other papers filed in the cause affecting the questions raised by

(*e*) If the provisions of Rule 125 have been complied with, it will give clerks the proper address to which the registered letter, here spoken of, may be forwarded.

the appeal (*f*). The clerk shall also furnish to the respondent, when required so to do, a duplicate copy of the proceedings so furnished to the appellant, or such portion thereof as may be required by him, and for every copy he shall be entitled to receive the sum of five cents per folio of one hundred words.

Setting down appeals.

21. The appellant shall within two weeks after the approval of the security or deposit being paid into court, or at such other time as the judge of the said County Court may order in that behalf provide, file the said certified copy with the registrar of the Court of Appeal, and shall thereupon forthwith set down the cause for argument before a judge of the said Court of Appeal, and shall forthwith give notice thereof and of the appeal, and of the grounds

(*f*) The certificate would be a general one that all the papers thereto annexed were true copies, &c. It would not be necessary to certify each separately. This certificate should be signed by the clerk and have the seal of the court affixed thereto.

There will often be difficulty in practice in deciding what papers or information are to be covered by this provision. To obviate this, as far as possible, a time and place should be named for settling the case that is to go before the appellate court, so that the opposite party may have an opportunity of being present.

The certificate may be as follows:

(*Style of Court and Cause.*)

"I, , clerk of the above-named court, hereby certify that the papers hereunto annexed are true copies respectively of the summons in this cause with all notices endorsed thereon, &c., (*following the words of the section, and in accordance with the facts*), being all the papers filed in this cause affecting the questions raised by the appeal from the judgment herein.

Given under my hand and the seal of the said court, this day of , A. D. 18 :"

(*Seal of Court.*)

Clerk.

thereof (*g*) to the respondent, his counsel, attorney or agent, at least seven days before the day for which the same is set down for hearing (*h*), and the said appeal may be heard and disposed of by a single judge of the Court of Appeal, and he shall have power to dismiss the appeal or give any judgment, and make any order which ought to have been made, and he shall give such order or direction to the court below touching the decision or judgment to be given in the matter as the law requires (*i*), and shall also award costs to the party in his discretion, which costs shall be certified to and form part of the judgment of the court below, and upon receipt of such order, direction and certificate, the court below shall proceed in accordance therewith (*j*). Hearing. Costs

(*g*) The words "and of the appeal" are rather indefinite, and apparently unnecessary. The respondent has already had notice of the appeal. This notice of setting down may be in the following form:

"In the Court of Appeal.

In the matter of an appeal from the Division Court of the County of in a cause in which is plaintiff and is defendant.

Take notice that this cause has been set down for argument, to be heard on the day of next, before a judge of the Court of Appeal, on an appeal from the judgment given on an application for a new trial herein, for the day of next, and further take notice that, the grounds of such appeal are as follows: *(Here set them out, separately if more than one.)*

Dated, &c.

To——the above respondent and —— his attorney or agent. } —— the above appellant *or*, —— his attorney."

(*h*) "At least seven days," would mean seven clear days.

(*i*) As to the extent of the powers of the judge in appeal, see note (*t*) to section 17.

(*j*) That is, the judge of the Division Court shall make any necessary order or direction, so that the judgment of the appellate court may be at once carried out.

Taxable costs.

22. The costs taxable, as between party and party, upon or connected with any appeal shall be the actual disbursements, and no greater amount over and above actual disbursements than fifteen dollars, inclusive of counsel fee. The costs of such appeal, as between attorney and client, shall be taxable or the County Court scale (*k*). Section fifty-five of the Court of Appeals Act shall not apply to appeals made under this Act (*l*).

INSPECTOR OF DIVISION COURTS AND HIS DUTIES.

Appointment of Inspector.

23. The Lieutenant-Governor may, from time to time, appoint an Inspector of Division Courts, who shall hold office during pleasure (*m*), and whose duty shall be:

Inspection of offices.

(1) To make a personal inspection of each Division Court and of the books and court papers belonging thereto;

(*k*) A distinction is here made between costs as between party and party, and costs between attorney and client. The successful party on the appeal will have to pay out of his own pocket the difference between the fifteen dollar fee and disbursements, and the costs taxable to the attorney as between attorney and client, on the County Court scale.

(*l*) That section provides for the collection of certain fees, payable to the Crown in stamps.

(*m*) This section gives statutory recognition to an office which had been in existence since 1872, when Mr. Joseph Dickey, who had been a Division Court clerk of long experience, was first appointed. The same gentleman has been re-appointed under this provision. His position previously was one which some declined to recognise, and his usefulness was thereby much marred. The office is one that has already been found productive of benefit, and will be more useful now that its duties have been defined and proper authority given.

(2) To see that the proper books are provided (*n*), that they are in good orderd and condition, that the proper entries and records are made therein in a proper manner, at proper times, and in a proper form and order, and that the court papers and documents are properly classified and preserved; Books, etc.

(3) To ascertain that the duties of the officers of the Division Courts are duly and efficiently performed, and that the office is at all times (*o*) duly attended to by the clerk; Officers' duties.

(*n*) These books are, 1st. The Procedure Book; 2nd. The Cash Book; 3rd. The Debt Attachment Book; 4th. The Foreign Procedure Book (see O'Brien's D. C. Manual, p. 28); and now also the Book of Fees, &c., under section 31 of this Act.

(*o*) Is there an exception in the case of "holidays," and if so, what holidays? There is nothing said in this or any other Act as to holidays for Division Courts or their officers. The only allusion to holidays is in section 23 of the Division Courts Act—(see O'Brien's Division Court Manual, p. 17)—which provides for the adjournment of the court in the absence of the judge; it being the duty of the clerk to adjourn over Sunday or any legal holiday. The Interpretation Act certainly defines the meaning of the word "holiday," Rev. Stat. O. cap. 1, sec. 8, sub-sec. 16, in all Acts where such section applies, but there is no reference in the Division Courts Acts to any holiday, and the definition has therefore nothing whereon to operate, in a strict sense, so far as that enactment is concerned. Nor is there any discretion given to the Inspector to declare that the office need not open on any day to be named by *him;* but it is his duty to see that it is *at all times* attended to by the clerk.

It has, however, generally been considered by the judges and clerks that section 23 of the Division Courts Act implies that the days there mentioned are days on which officers are not compellable to attend their offices; but there is great difficulty in framing a sound argument in favour of what has been the general custom in this matter, and what certainly *ought* to be the law. It is specifically provided in various Acts and Rules affecting other public officers that their offices shall not be open on certain days, and there should be a similar provision in respect to Division Court officers. It is apparently a *casus omissus.*

Lawful fees.

(4) To see that lawful fees only are taxed or allowed as costs;

Security by clerks and bailiffs.

(5) When directed so to do by the Lieutenant-Governor, to ascertain that proper security has been given by any clerk or bailiff, and that the sureties continue sufficient;

Reporting to the Lieutenant-Governor.

(6) To report upon all such matters as expeditiously as may be to the Lieutenant-Governor for his information and decision.

Power of Inspector in making inquiry into conduct of officers.

24. When the said inspector considers it expedient to institute an inquiry into the conduct of any Division Court clerk or bailiff in relation to his or their official duties or acts, it shall be lawful for the said inspector to require such clerk or bailiff, or other person or persons, to give evidence on oath, and for this purpose the said inspector shall have the same power, to summon such officers to attend as witnesses, to enforce their attendance and to compel them to produce books and documents, and to give evidence, as any court has in civil cases (*p*).

Inspector's salary.

25. A salary, not exceeding fourteen hundred dollars per annum, shall be paid to the

As to office hours the reasonableness of the time must be largely regulated by the amount of work to be done in the different courts and other circumstances, and it is the duty of the inspector to see that the duties of the office are in this as in other respects efficiently performed.

(*p*) These are very full powers, of an inquisitorial character, and should therefore be exercised only when absolutely necessary, and with much discretion.

inspector, and such actual and necessary travelling and other expenses as shall be from time to time voted by the Legislature, and shall be payable out of the Consolidated Revenue Fund for the Province of Ontario.

Books, etc., to be produced for inspection.

26. The Division Court clerks and bailiffs shall, as often as required by the said inspector, produce all books and documents required to be kept by them, or that may hereafter be required to be kept by them at the clerk's office, for examination and inspection. Any clerk or bailiff shall report to the inspector all such matters relating to any cause or proceeding as the inspector shall require.

Officers to inform Inspectors of their appointment, etc.

27. It shall be the duty of every Division Court clerk or bailiff, within five days after his appointment to office, to inform the inspector of his appointment, his full name and post office address, the names of his sureties, their respective callings or professions, places of residence, and post office address.

Inspector to be informed of new sureties.

28. When any clerk or bailiff has given new sureties, as required by the Division Courts Act, he shall immediately inform the said inspector of such change, giving the names of the sureties, their respective callings or professions, places of residence, and post office address.

Officers to produce certificate of filing covenant, etc.

29. Every Division Court clerk and bailiff shall have and keep in his possession or custody the certificate of the clerk of the peace named in the twenty-eighth section of the Division Courts' Act (*q*), and shall produce the same for the information of the inspector when required so to do.

Returns.

30. Every clerk shall, on or before the fifteenth day of January in each year, make a return of the business of his office for the year ending the thirty-first day of December preceding, in such form and manner as the Lieutenant-Governor shall direct (*r*).

Clerks to make returns to Inspector.

31. Every clerk and bailiff shall keep a separate book in which he shall enter from day to day all fees, charges and emoluments received by him by virtue of his office, and shall, on the fifteenth day of January, in each year, make up to and including the thirty-first day of December, of the previous year, a return to

(*q*) That is a certificate of the clerk of the peace, that the covenant of the clerk or bailiff and his sureties approved by the judge under section 27 of the Act, has been filed in his office, and which certificate the Clerk of the Peace is bound under section 28 to supply to each officer on payment of the fee required on filing his covenant. It would be very desirable that the clerk or bailiff should see that this certificate states the names of the sureties, their additions, residence, and Post Office address, as also the amount for which the parties are holden. Each clerk and bailiff should keep his own certificate and be able to produce it when required under this section.

(*r*) This is in addition to, and not in lieu of the half yearly return or statement required by section 42 of the Division Courts Act.

the inspector, under oath, shewing the aggregate amount of fees, charges and emoluments so received by him, and which he has become entitled to receive, and has not received during the year (*rr*).

CLERKS AND BAILIFFS. (*s*)

Dismissal of clerks and bailiffs.

32. The Lieutenant-Governor may, upon the report of the inspector or of the county court judge, dismiss from office for misconduct or incompetency, any clerk or bailiff heretofore appointed (*t*).

The Lieutenant-Governor may appoint clerks and bailiffs.

33. The Lieutenant-Governor may appoint, during pleasure, the clerk and bailiff or bailiffs of any Division Court.

(*rr*) Clerks and bailiffs should in the book spoken of enter all fees *earned* by them—(see sec. 39)—that is, as explained by the last part of the section, all fees received, or which they are entitled to receive. The words "entitled to receive" would include all fees which he has the right, as such officer, to collect for his services. The officer may forego any fee he chooses, but he is nevertheless bound to account for it in the return required by this section. (See also note (*y*) to section 39.)

(*s*) The subsequent sections as to the appointment and dismissal of clerks and bailiffs by the Government instead of the judges, are entirely new. It is not here worth while to discuss the wisdom of the change. Many doubt it. It is very likely to have the evil effect of rendering the judges less careful in looking after their officers, and they certainly should know more about them than any one else. Section 34 says that these provisions shall not relieve the county judge from responsibility, but he certainly cannot be expected to feel the same responsibility when the power of appointment and dismissal has been taken out of his hands.

(*t*) Or it is presumed any officers thereafter to be appointed, who by section 33 are to hold their office "during pleasure." The judge has now only the power of suspension for cause over officers appointed by the Lieutenant-Governor (sec. 34). He can, however, suspend *or* remove those appointed by himself (sec. 36).

Duty of County Court Judges not affected.

34. Nothing in this Act contained shall relieve the county judge from the responsibility of seeing that the officers of his court perform their duties, or from examining into complaints which may be made against them, or from the duties imposed upon him by the said Act in reference to the security to be given by clerks and bailiffs, and such last-mentioned duties are declared and shall be held to be of a judicial and not of an administrative character. The judge may for cause suspend any clerk or bailiff appointed by the Lieutenant-Governor, and in case of such suspension by him, he shall forthwith report the same and the cause thereof to the Provincial Secretary; and in case a vacancy shall occur in the office of clerk or bailiff within his county, the judge shall forthwith notify the Provincial Secretary thereof.

R. S. O., c. 47 s 25, amended.

35. The twenty-fifth section of the Division Courts Act is amended by striking out the words "County Court clerk or" in the first line thereof (*u*).

S. 26 repealed.

36. The twenty-sixth section of the Divi-

The Lieutenant-Governor can only dismiss officers *heretofore* appointed on the report of the inspector or County judge. (See *Hammond* v. *McKay*, 26 U. C. R. 434).

(*u*) By that section a County Court clerk was rendered ineligible for the position of a Division Court clerk. The present enactment takes away this incompetence.

sion Courts Act is hereby repealed (*v*); but, nevertheless, the judge of the county court may at pleasure suspend or remove any clerk or bailiff within his own county heretofore appointed by a judge.

Clerk or bailiff not to collect on commission.

37. No clerk or bailiff shall directly or indirectly take or receive any commission, charge, expenses, fee, or reward for or in connection with the collection of any debt or claim which has been or may or can be sued in the court for which he is so clerk or bailiff, except such fees as are provided by any tariff of fees under the Division Courts Act or this Act (*w*).

Certain clerks not disqualified.

38. Nothing in this Act or any other Act contained shall render ineligible or disqualify to sit or vote as a member of the Legislative Assembly any person who at present (*x*) holds the office of Division Court Clerk under the nomination or appointment of any judge of any county court.

(*v*) This was the section that empowered the County Judges to appoint and remove clerks and bailiffs.

(*w*) This is a very strict provision. Cases will come under it, where no great harm has or could well be done. But it is, nevertheless, a wise precaution and will prevent abuses. It will put a stop to any clerk or bailiff acting as a collecting agent, either in his own name or in the name of any one else, or receiving any share or advantage derivable from commission for collections, such as here spoken of. As the appointments are now political, it is probable that officers will be carefully watched. It is to be hoped that the law will, under the circumstances, be as carefully enforced.

(*x*) It was supposed that this section was necessary to prevent certain members of the House of Assembly which passed this Act from being immediatelv disqualified. A Division Court clerk appointed by the Lieutenant-Governor could not be elected or sit as a member.

Fees to be retained by clerks for their own use.

39. Each Division Court Clerk shall be entitled to retain to his own use in each year all the fees and emoluments earned (*y*) by him in that year up to one thousand dollars;

(1) Of the further fees and emoluments earned by each Division Court Clerk in each year in excess of one thousand dollars, and not exceeding fifteen hundred dollars, he shall be entitled to retain to his own use ninety per cent., and no more;

(2) Of the further fees and emoluments earned by each Division Court Clerk in each year in excess of fifteen hundred dollars, and not exceeding two thousand dollars, he shall

(*y*) The word "earned" scarcely at first sight makes clear what is intended by this provision. It means more than the word "received," and is evidently intended to cover fees which the officer not only *has* actually received, but those which he *ought* to have received. Clerks will see therefore, the absolute necessity in their own interest, of insisting on the cash deposit of all fees before proceedings are taken. See also note (*r*) to section 31.

This provision is taken with a few changes from that relating to fees to registrars (R. S. O., cap. 111, secs. 98, *et seq.*), but there the word is *received*. And in regard to Registrars, the expenses of their office are paid by the county. It would not have been unreasonable to have placed clerks on a similar footing, at least as regards the expenses of their offices, books, fuel, &c. As to the remuneration of clerks by means of fees, see O'Brien's D. C. Manual, p. 34. Some of the objections to the fee system are there pointed out. The Legislature has not thought proper, however, to return to the system once in vogue, of paying clerks by salaries, but has, as we have seen, adopted the same system as was, by 35 Vict. c. 27, made applicable to registrars. The same scale is adopted, but, in the case of clerks, the point fixed for commencing the graduated scale, is much lower than with registrars. It may be remarked that, as a class, Division Court clerks are in no way inferior to Registrars either in education or social standing. The duties of their office certainly require as much intelligence and are not less responsible.

be entitled to retain to his own use eighty per cent., and no more ;

(3) Of the further fees and emoluments earned by each Division Court Clerk in each year in excess of two thousand dollars and not exceeding twenty-five hundred dollars, he shall be entitled to retain to his own use seventy per cent., and no more ;

(4) Of the further fees and emoluments earned by each Division Court Clerk in each year in excess of twenty-five hundred dollars and not exceeding three thousand dollars, he shall be entitled to retain for his own use sixty per cent and no more ;

(5) Of the further fees and emoluments earned by each Division Court Clerk in each year in excess of three thousand dollars, he shall be entitled to retain for his own use fifty per cent., and no more (*z*).

Clerk to pay excess to Treasurer of Province.

40. On the fifteenth day of January in each year each Division Clerk shall transmit to the Treasurer of the Province a duplicate of the return required by this Act, and shall also pay to such Treasurer for the use of the Province such proportion of the fees and emoluments earned by him during the preced-

(*z*) The clerk has to pay a tax of ten per cent. to the Government on all fees received by him over $1,000, and not exceeding $1,500. Twenty per cent. on any excess between $1,500 and $2,000 and so on.

ing year, as under this Act he is not entitled to retain to his own use.

HOLDING OF COURTS.

Holding courts in cities.

41. For and notwithstanding anything contained in chapter forty-seven of the Revised Statutes of Ontario, or any amendment thereof, or any of the general rules in force in the Division Courts of this Province, in any city in which two Division Courts are established or held, all or any of the sittings of both of such courts may be appointed and held in any such divisions, and both clerks of such courts may, with the approval of the Lieutenant-Governor in Council, have and keep their offices in the same Division in such city.

Use of court-house.

42. The sittings of the Division Court in any county town may be held in the county court-house, and, in the cases of cities and towns separated from the county, the use of the court-house for such purpose may be taken into account in settling the proportion of the charges to be paid by the city or town for the maintenance of the court-house.

JURIES.

R. S. O. c. 47, s. 109, repealed.

43. Section one hundred and nine of the Division Courts Act is hereby repealed, and the following section is substituted therefor:

When a jury may be required.

109. Either party may require a jury in actions of tort or replevin where the sum or the value of the goods sought to be recovered exceeds twenty dollars, and in all other actions where the amount sought to be recovered exceeds thirty dollars (*a*).

S. 112 amended

44. The one hundred and twelfth section of the Division Courts Act is hereby amended by inserting after the word "beginning," in the fourth line thereof, the words "at the first selection after this Act comes into force," and by adding to said section the following:

"In case it shall not be necessary to summon all the persons on the roll or rolls entitled to be summoned in any one year, the clerk shall, at the end of each year, so certify on the roll, and shall state in such certificate the number of persons summoned during the year, and at what number on the roll he left off; and, in

(*a*) By section 109 a jury might have been demanded in actions of tort when the amount exceeded $10, and in all other actions where the amount exceeded $20. The right to a jury is plain as to all actions of tort, except replevin; as to this action, it is not very clear, though it would be plain enough if the words were "in actions of tort where the sum sought to be recovered exceeds $20, and in replevin where the value of the goods sought to be recovered exceeds $20."

It may, however, be inferred from the language used that this was the intention of the Legislature. Replevin is an action of tort, but it is a special form of action, claiming, not the recovery of a certain sum of money, but the return of goods improperly seized under distress, or otherwise unjustly taken or detained. If a judgment for the plaintiff directs a return of the goods, or so much in lieu thereof, as damages, the words used would be inappropriate to any other reading of the section than the one here suggested.

summoning persons for the next year, he shall begin with the next number on the roll as nearly as he conveniently can; and so on from year to year until all the rolls have been gone through (*b*)."

Fees for Jury Fund.

45. There shall be paid to the clerk of the Division Court, in addition to all costs or jury fees now by law payable (*c*) on every suit en-

(*b*) The difficulty which this section is intended to obviate was pointed out by the author when commenting on the now amended section (see O'Brien's D. C. Manual, p. 103). In practice, the persons at the head of the list were called upon to act as jurors year after year; now the whole list must be gone through.

Section 112 of the Division Courts Act will now read as follows:

"The jurors to be summoned to serve at any Division Court shall be taken from the collector's rolls of the preceding year for the townships and places wholly or partly within the division, and shall be summoned in rotation, beginning at the first selection, after this Act comes into force, with the first of such persons on such roll; and if there be more than one such township or place within the division, beginning with the roll for that within which the court is held, and then proceeding to that one of the other rolls which contains the greatest number of such persons' names, and so on, until all the rolls have been gone through, after which, if necessary, they may be again gone through, wholly or partly, in the same order, and so on, *toties quoties*. In case it shall not be necessary to summon all the persons on the roll or rolls entitled to be summoned in any one year, the clerk shall, at the end of each year, so certify on the roll, and shall state in such certificate the number of persons summoned during the year, and at what number on the roll he left off; and, in summoning persons for the next year he shall begin with the next number on the roll, as nearly as he conveniently can, and so on, from year to year, until all the rolls have been gone through."

(*c*) By section 47, sub-sec. 2, and Form 3, of the Division Courts Act, each juror, sworn in any cause, was entitled to a fee of ten cents; and section 110 of the same Act directs the clerk to collect from the suitor who demands a jury, "the proper fees for the expense of such jury." By section 47 of the present Act, each juror is to receive the sum of one dollar, provided he does not attend as a witness or as a litigant. This section provides for a fund for the payment of jurors, as to which, see note (*e*) to section 47.

tered (*d*) where the claim exceeds twenty dollars, but does not exceed sixty dollars, three cents; where the claim exceeds sixty dollars, but does not exceed one hundred dollars, six cents; and where the claim exceeds one hundred dollars, twenty-five cents; and the same shall be taxed and allowed as costs in the cause; and, on or before the fifteenth day of January in each year, every clerk shall return to the treasurer of the county a statement, under oath, shewing the number of suits originally entered in his court during the year previous, in which the claim exceeded twenty dollars, but did not exceed sixty dollars; the number in which the claim exceeded sixty dollars, but did not exceed one hundred dollars, and the number in which the claim exceeded one hundred dollars; and he shall, with such statement, pay over to such treasurer the sum of three cents on each suit so entered where the claim exceeded twenty dollars, but did not exceed sixty dollars; the sum of six cents on each suit where the claim exceeded sixty dollars, but did not exceed one hundred dollars; and the sum of twenty-five cents on each suit where the claim exceeded one hundred dollars, together with all other moneys received by him for jurors' fees during the year; and such treasurer shall keep an ac-

Fees for Jury fund

Return.

(*d*) This is on the original entry only, and not on any subsequent or interlocutory proceeding.

count of all such moneys so received by him under the head of "Division Court Jury Fund."

Cities forming separate divisions.

46. In cities which include one or more entire divisions and no other fraction of a division the clerk shall make the return and payment, provided for by the next preceding section, to the treasurer of such city, who shall keep an account of such moneys in the same way as is provided in the case of county treasurers, and shall, on the presentation of the certificate of the judge, forthwith repay to the clerk of the court the jurors' fees paid by him in the same manner as is hereafter provided in the case of county treasurers.

Fees of jurors.

47. The clerk of every Division Court shall pay to each person who has been summoned as a juror, and who attends during the sittings of the court for which he has been summoned, and who does not attend as a witness in any cause, or as a litigant in his own behalf, the sum of one dollar (*e*), and having so paid the same, ex-

(*e*) Section 45 provides that the sums therein spoken of as payable to clerks towards the jury fund, are "in addition to all costs or jury fees now by law payable." These two sources of revenue are now to form one fund for the payment of fees to jurors. The present section 47 says that each juror (1) who has been summoned as a juror (2) who attends court, and (3) who does so not as a witness or suitor, shall be paid one dollar. They need not necessarily be sworn to try a case to be entitled to the fee. It is not said whether this dollar fee is to be in addition to the ten cents to a suitor under section 47, sub-sec. 2, of the Division Courts Act (see O'Brien's D. C. Manual, p. 35); but it is plain, from the fact that both sources of revenue are to be paid in to one fund, out of which jurors are to paid, that they are only entitled to the sum of one dollar each spoke[illegible] of in this section. (See also n[illegible] to section 45).

The [illegible]e dollar is not payable

cept in the cases in the next preceding section provided for, the presiding judge shall so certify to the treasurer of the county, and shall deliver such certificate to the clerk, and the treasurer of the county shall, upon the presentation of such certificate to him, forthwith pay to the clerk, or his order, the amount which the clerk appears, by such certificate, to have paid the jurors as aforesaid. In the case of cities, other than those provided for by the next preceding section, and towns separated from the county, the amounts paid in by the clerks of the courts in such cities and towns, and the amounts paid by the county treasurer to the clerks of such courts for jury fees, shall be taken into account in settling the proportion of the charges to be paid by the city or town towards the costs of administration of justice. Judge's certificate.

48. The word "fifteen" in the second line of the one hundred and fourteenth section of the Division Courts Act is repealed, and the word "twelve" is substituted therefor (*f*). Sec. 114 amended.

49. There shall be added to the one hundred and twenty-first section of the said Division Courts Act the following words:—"In the event of the panel being exhausted before a Sec. 121 amended. Judge may call *tales*.

except to a "person who has been summoned as a juror." It would not, therefore, be payable to a juror impannelled and sworn under section 122, at the direction of a judge, to try some fact controverted in the cause.

(*f*) See note (*p*) to that section in O'Brien's D. C. Manual. Any difficulty which may arise from there not being enough jurymen in court, is provided for by the next section.

jury shall be obtained, the judge may direct the clerk to summon from the body of the court a sufficient number of disinterested persons to make up a full jury, and any person so summoned may, saving all lawful exceptions and rights of challenge, sit and act as a juror as fully as though he had been regularly summoned" (*g*).

APPEALS UNDER MASTERS' AND SERVANTS' ACT (*h*).

Modes of Appeal under R. S. O. c. 133.

50. All appeals hereafter to be made from or against any conviction or order for the payment of wages, or any order of dismissal from

(*g*) In the Superior Courts "if by means of challenges or other cause a sufficient number of unexceptional jurors doth not appear at the trial either party may pray a *tales*. A *tales* is a supply of *such* men as are summoned upon the first panel, in order to make up the deficiency . . . and the judge is empowered, at the prayer of either party, to award a *tales de circumstantibus* of persons present in court, to be joined to the other jurors to try the cause; who are liable however to the same challenges as the principal jurors." The writer quaintly continues, "This is usually done till the legal number of twelve is completed, in which patriarchal and apostolic number Sir Edward Coke hath discovered abundance of mystery." (Blackstone's Com. vol. IV. p. 365.) We have degenerated from the "number of perfection" to the fanciful number five.

A person summoned in this way would, doubtless, be entitled to his dollar fee under section 47, subject to the exceptions therein set forth.

As to the right of challenge, see O'Brien's D. C. Manual, p. 109.

(*h*) Until this time the right of appeal from the decision of magistrates under this Act was to the General Sessions of the Peace. The County judge is the presiding officer in both courts, but it was thought that it would be more convenient and save time to have the appeal heard in a Division Court.

Appeals under this Act are very uncommon, and the practical utility of this legislation may well be questioned. It would have been much better if the Legislature had conferred all jurisdiction under the Act on the Division Courts. This would have

service or employment or against any decision of any Justice or Justices under the one hun-

been quite as advantageous to all parties, and saved appeals.

The following is the Act refered to :—

REVISED STATUTES OF ONTARIO, CHAPTER 133.

An Act respecting Master and Servant.

1. [Slavery prohibited.]

No voluntary contract of service or indentures to be binding longer than nine years.

2. No voluntary contract of service or indentures entered into by any parties shall be binding on them, or either of them, for a longer time than a term of nine years from the day of the date of such contract. (C. S. U. C. c. 75, s. 2.

Agreements by which workmen, etc., may share in the profits of the business.

3. It shall be lawful in any trade, calling, business, or employment, for an agreement to be entered into between the workman, servant, or other person employed, and the master or employer, by which agreement a defined share in the annual or other net profits or proceeds of the trade or business carried on by such master or employer, may be allotted and paid to such workman, servant, or person employed, in lieu of, or in addition to his salary, wages, or other remuneration, and such agreement shall not create any relation in the nature of partnership or any rights or liabilities of co-partners, any rule to the contrary notwithstanding ; and any person in whose favour such agreement is made, shall have no right to examine into the accounts or interfere in any way in the management or concerns of the trade, calling, or business in which he is employed under the said agreement or otherwise ; and any periodical or other statement or return by the employer of the net profits or proceeds of the said trade, calling, business, or employment on which he declares and appropriates the share of profits payable under the said agreement, shall be final and conclusive be-

dred and thirty-third chapter of the Revised Statutes of Ontario, entitled "An Act respect-

tween the parties thereto, and all persons claiming under them respectively, and shall not be impeachable upon any ground whatever. (36 V. c. 25, s. 7.)

Certain agreements within this Act.

4. Every agreement of the nature mentioned in the last preceding section shall be deemed to be within the provisions of this Act, unless it purports to be excepted therefrom or this may otherwise be inferred. (36 V. c. 25, s. 2.)

Verbal as well as written agreements between masters and servants to be binding.

5. All agreements or bargains verbal or written, between masters and journeymen or skilled labourers in any trade, calling or craft or between masters and servants or labourers for the performance of any duties or service of whatsoever nature, shall, whether the performance has been entered upon or not be binding on each party for the due fulfilment thereof; but a verbal agreement shall not exceed the term of one year. (C. S. U. C. c. 75, s. 3.)

Tavern-keepers, etc., not to keep wearing apparel of servant in pledge for any amount above $6.

6. No tavern-keeper or boarding-house keeper shall keep the wearing apparel of any servant or labourer in pledge for any expenses incurred to a greater amount than six dollars and on payment or tender of such sum or of any less sum due, such wearing apparel shall be immediately given up whatever be the amount due by such servant or labourer, but this is not to apply to other property of the servants or labourer. (C. S. U. c. 75, s. 6.)

How certain differences between master and servant are to be decided.

7. If after the termination of an engagement between master and servant, any dispute arises between them in respect of the term of such engagement or of any matter appertaining to it, the Justice or Justices of the Peace who receive the complaint shall be bound to decide the matter in accordance with the provisions of this Act, and as though the engagement between the

parties still subsisted, but proceedings must be taken within one month after the engagement has ceased. (29 V. c. 33, s. 1.)

Agreements made out of Ontario for the performance of service therein may be enforced in Ontario.

8. In case any written agreement or bargain is made out of Ontario for the performance of any duties or service within Ontario, which agreement or bargain if it had been made within Ontario, could have been enforced therein under the provisions of this Act, or in respect of which agreement or bargain any proceedings might in such case have been had or taken under this Act, then such written agreement or bargain made as aforesaid without Ontario may be enforced in like manner, and the like proceedings may be had in respect thereof, upon the parties thereto being or coming within this Province, as if such agreement had been made within Ontario. (36 V. c. 24, s. 1.)

Summary proceedings before Justices.

9. Any one or more of Her Majesty's Justices of the Peace may receive the complaints upon oath of parties complaining of any contravention of the preceding provisions of this Act, and may cause all parties concerned to appear before him or them, and shall hear and determine the complaint in a summary and expeditious manner (C. S. U. C. c. 75, s. 7).

Evidence.

10. Whenever the Justice takes the evidence of the complainant in support of his or her claim, the said Justice shall be bound to take the evidence of the defendant also if tendered (29 V. c. 33, s. 2).

Jurisdiction.

11. Complaints against any person under this Act may be prosecuted and determined in any county in which the person complained against is found (C. S. U. C. c. 75, s. 11).

Complaints by servants against employers.

12. Any one or more of such Justices upon oath of any such servant or labourer against his master or employer concerning any non-payment of wages, may summon such master or employer to appear before him or them at a reasonable time to be stated in the

ing Master and Servant" (*i*), shall, notwith-

Justices to determine complaints.

summons, and he or they or some other Justice or Justices shall, upon proof on oath of the personal service of such summons, examine into the matter of the complaint, whether the master or employer appears or not, and upon due proof of the cause of the complaint, the Justice or Justices may discharge such servant or labourer from the service or employment of such master, and may direct the payment to him of any wages found to be due not exceeding the sum of forty dollars, and the said Justice or Justices shall make such order for payment of the said wages as to him or them seems just and reasonable with costs, and in case of non-payment of the same, together with the costs, for the space of twenty-one days after such order has been made, such Justice or Justices shall issue his or their warrant of distress for the levying of such wages together with the costs of conviction and of the distress (C. S. U. C. c. 75, s. 12).

Appeals.

13. Any person who thinks himself aggrieved by any such conviction or order for the payment of wages, or by any order of dismissal from service or employment, or any order or decision of any Justice or Justices under this Act, may appeal in the same manner as is provided in "The Act respecting Summary Convictions before Justices of the Peace," (Rev. Stat. c. 74) ; and in case of dismissal of the appeal or affirmance of the conviction, order or decision, the court appealed to shall order and adjudge the offender to be punished according to the conviction, or shall enforce the order for payment of wages or of dismissal, as the case may be, and for the payment of the costs awarded, and shall, if necessary, issue process for carrying such judgment into effect (C. S. U. C. c. 75, s. 13).

Rev. Stat. c. 74.

(*i*) As will be seen by reference to this Statute (at p. 1191 of R. S. O.), section 12 of C. S. U. C. cap. 75, from which it was taken, gives Justices

standing anything contained in the thirteenth section of the said Act, be made to the Division Court, holden in the division in which the cause of action arose (*j*), or in which the party complained against, or one of them, resided at the time of the making of the complaint.

Notice of appeal.

51. The person proposing to appeal (*k*) shall give to the opposite party a notice in writing of his appeal, and of the cause or matter thereof (*l*) within four days after such conviction,

power to determine complaints by servants against their masters concerning any "misusage, refusal of necessary provisions, cruelty or ill-treatment." These powers, not being within the jurisdiction of the Legislature of Ontario, have not been incorporated into the Revised Statutes; and, by section 54 of the present Act, sections 50 to 53, both inclusive, do not apply to any appeal from any decision in reference to the matters quoted above. Such appeals are therefore still governed by section 13 of R. S. O. cap. 133.

The result is, therefore, that the appealable matters under this section are only such things as a Justice is empowered to adjudicate upon by virtue of the Master and Servant Act, as it appears in R. S. O. cap. 133. These matters are referred to in sec. 9 of that Act, as any contravention of its preceding provisions, and they include those more specifically set forth in sec. 12, viz.: any order for the payment of wages, and the discharge of the servant from service or employment. Nothing is said about an appeal from an order dismissing the complaint; but it may be presumed that this eventuality is covered by the general words "or against any decision of any Justice, &c."

(*j*) These words must be construed in the same way as the like words in the Division Courts Act, as to which see note (*n*) to section 62 of that Act. If, therefore, the contract be made in one Division and the breach occur in another, the appeal must be made to the court for the Division in which the party complained against resided at the time the complaint was made.

(*k*) That is, any person who thinks himself aggrieved by any conviction or order for the payment of wages or by any order of dismissal from service or employment, or any order under the Master and Servant Act.

(*l*) This notice may be in the following form:—

"To — — of ——

Take notice, that I, the undersigned A. B. of, &c., do intend [*or if given by attorney*, that A. B., of, &c., intends] to enter and prosecute an ap-

order, decision or judgment, and eight days, at least, before the holding of the court at which the appeal is to be heard, and shall also, within the four days, enter into a bond (*m*) to the oppo-

peal at the Division Court of the County of , to be holden at on the day of next, against a certain order bearing date the day of instant, and made by one Esq., one of Her Majesty's Justices of the Peace for the County of [*or* Police Magistrate, *as the case may be*] whereby I [*or* the said A. B.] was ordered [*here state the purport of the order and the amount adjudged to be paid, &c.*]

And further take notice that the grounds of my appeal (*or of the appeal of the said A. B.*) are as follows: —(*here state concisely, but clearly, the grounds relied on, taking care to give them all, as the appellant will not be allowed to go into grounds not stated*).

Dated, &c. A. B.,
or——attorney
for A. B."

This notice should if possible be served personally, but this is not compulsory, and it would be sufficient if left at the dwelling house of the party with his wife or servant or other member of his household, so that it can reasonably be presumed to have come to his knowledge (Oke's Magisterial Synopsis, 198). This service has to be made within four days after the day the decision is given and eight days before the holding of the Court, not counting the day the notice is given nor the court day.

When the service is effected an affidavit should be at once made as both have to be filed with the clerk, as directed by section 52.

(*m*) The following is suggested as a form of bond:—

"Know all men &c. (*as in form on* p. 44 *ante, to*, dated, &c.)

Whereas on the day of before , Esq., one of Her Majesty's Justices of the Peace for the County of , a complaint was made by (*here state the nature of the complaint and the names of the parties*) and whereas Esq., as such Justice, did on the day of make an order to the following effect (*here state the nature of the order*).

And whereas the said thinks himself aggrieved by such order, and desires to appeal therefrom to the Division Court of the County of at the sittings thereof to be holden on the day of .

Now therefore the condition of this bond is such that if the above bounden (*the appellant*) shall personally appear at the said court, and try such appeal and abide by the judgment of the said court thereon and pay such costs as shall be by the said court awarded, then this obligation shall be void, otherwise to remain in full force and virtue."

Signed, sealed, &c.

site party with two sufficient sureties—to be approved of by the clerk of the court—in the penal sum of one hundred dollars, conditioned, personally to appear at the said court and try such appeal, and to abide the judgment of the court thereon, and to pay such costs as shall be by the court awarded, and upon such notice being served and bond executed and filed with the clerk, all proceedings on the order, conviction, or decision appealed against shall be stayed until the determination of the appeal.

Case to be entered by clerk.

52. The clerk shall, on the bond and notice of appeal with an affidavit of service thereof being filed in his office, enter the cause in his procedure-book (*n*) and the appeal may be tried with a jury if the appellant file with the clerk

It will be noticed that the appellant has to appear on the hearing of the appeal *in person*.

This bond is to be approved by the clerk of the court. He would probably require for his own protection an affidavit of justification and execution which might be similar in form to those given on *ante* p. 45. It would not probably be necessary to give the opposite party an opportunity of objecting to the bond. The statute seems to leave all that in the hands of the clerk.

(*n*) This entry might be as follows:

No.—— A.D., 1880.

John Brown, of &c., (appellant) v. Thomas Ford, of &c., (Respondent). Appeal under the Master and Servant Act.

1880		
1	July	Bond in appeal approved by Clerk.
"	"	Bond and notice of appeal with affidavit of service filed.
4	"	Respondent filed notice requiring jury, and deposited therefor $——
14	"	Cause tried. Verdict of jury dismissing appeal. *(or, if facts so require it, state as follows);*
"	"	Cause tried. Verdict affirming order. Judge ordered appellant to pay the costs. (*Any other order may be similarly entered*).

at the time of filing the bond a notice requiring a jury (*o*), or if the respondent, within four days after the service of the notice of appeal upon him, file a notice with the clerk, requiring a jury, and if the proper fees are, in either case, deposited with the clerk; otherwise the judge may try the appeal without a jury, or may summon a jury from the body of the court, as to him seems meet.

Proceedings in case of appeal dismissed or affirmed.

53. In case of the dismissal of the appeal or affirmance of the conviction, order or decision, (*oo*) the judge may order and adjudge the offender to be punished (*p*) according to the conviction or order, or he may direct the enforcement of the order for payment of wages or of dismissal, as the case may be, with the payment of the costs awarded, and any order or orders made by him in the premises shall be enforced and carried into execution by the officers of the court. The judge may direct execution to issue for the levying of any moneys or costs awarded or ordered to be paid, and in the event of any such moneys or costs being payable by the appellant, which have not been levied under execution against the goods of the appel-

(*o*) For form of notice see O'Brien's D. C. Manual p. 417, altering, however, the words "Plaintiff," and "Defendant," respectively to "Appellant" and "Respondent."

(*oo*) The eventuality of the appeal being allowed is not alluded to. It is doubtful whether the payment of costs could be enforced against a respondent.

(*p*) These words are entirely inappropriate, and can have no meaning here. See section 12 of the Master and Servant Act, *ante* p. 59, and next section.

lant, the judge may order the bond to be delivered up to the respondent, who shall be entitled to recover the amount due him with costs in any Division Court having jurisdiction.

Not to apply in certain cases,

54. The next preceding four sections shall not apply to any appeal from or against any order, conviction or decision made under the twelfth section of the seventy-fifth chapter of the Consolidated Statutes of Upper Canada, on any matter not within the jurisdiction of the Legislature of Ontario (*q*).

MISCELLANEOUS.

Sec. 94 R. S. O. repealed and new section substituted.

55. Section ninety-four of the Division Courts Act is repealed, and the following substituted therefor :—

Where set-off exceeds amount due to plaintiff.

"94. If the set-off, proved to the satisfac-
" tion of the judge, exceeds the amount shewn
" to be due to the plaintiff, the plaintiff shall
" be non-suited (*r*) or the defendant may elect
" to have judgment for such excess, provided
" such excess be an amount within the jurisdic-
" tion of the court, and if such excess be
" greater in amount than the jurisdiction of
" said court the judge may adjudicate that an
" amount of such set-off equal to the amount
" shown to be due to the plaintiff be satisfied
" by such claim, but such adjudication shall be

(*q*) See note (*i*) to section 50 *ante* p. 70.

(*r*) See O'Brien's D.C. Manual, pp. 81, 100, 303.

"no bar to the recovery by the defendant in "any subsequent suit for the residue of such "set-off (*s*)."

Clerk to mail notice of payment of money.

56. The clerk of every Division Court shall immediately after the receipt of any sum of money whatever, for any party to the suit, forward, through the post-office, to the party entitled to receive the same, a notice, enclosed in an envelope addressed to such party or in the case of a transcript of judgment from another court, then to the clerk who issued the same, at his proper post-office address, informing him of the receipt of such money. The notice thus sent shall be prepaid and registered, and the clerk shall obtain, and file among the papers in the suit the post-office certificate of such registration, and shall deduct the postage and charge for registration from the moneys in his hands, but he shall charge no fee for such notice. The absence from amongst the

(*s*) The difficulty attending section 94 of the Division Courts Act and the attempt to remedy it by Rule 152, are explained and commented on in the notes thereto in O'Brien's Division Court Manual, to which the reader is referred. This amendment puts beyond doubt the right of the defendant to have judgment in his own favour for any amount within the jurisdiction of the Court, without his being put to the necessity of a cross action. Of course the defendant is not compellable to plead a set-off, but may, if he so prefer, for any reason, defend upon any other ground, or let judgment go by default and then sue for his own claim.

By this section, if plaintiff have an account of $100 against defendant and defendant put in a set-off of $200, and both are proved, the latter is entitled to judgment for $100, and thus he recovers, in effect, a judgment for $200—for that is what the allowance of his set-off of $200 amounts to—and the Court has adjudicated on a claim for that sum.

papers in the suit of any such certificate of registration shall be *prima facie* evidence against the clerk that such notice has not been forwarded (*t*).

Renewal of execution by county attorney in certain cases.

57. When the books, papers and other matters in the possession of any clerk, by virtue of or appertaining to his office, become the property of the county crown attorney, under the forty-fourth section of the Division Courts Act, or in case of the suspension of a clerk, such county crown attorney may, during such suspension, or until the appointment and qualification of another clerk, when the same shall be presented for that purpose, renew any writ of execution issued out of such court, which may lawfully be renewed, and such renewal shall have the same force and effect as if the same had been renewed by a clerk of

(*t*) This section throws a duty on clerks which will doubtless prove satisfactory to the public, but is hardly fair to the clerks, as it imposes work upon them without providing any compensating remuneration. They can console themselves with the reflection that it will largely increase public confidence in Division Court administration, which unfortunately, as to some few of them, is rather at a low ebb, and which has doubtless rendered this legislation expedient. Rule 159 is not affected by this section; the notice required by the Act, being only intended to advise parties that certain moneys lie in the hands of some clerk to their credit. They are governed by the provisions of Rule 159, which comes in at this stage for the protection of clerks.

This section is a re-enactment of Rules 95 and 180, but omits the words contained in Rule 95.

This notice should, as a matter of convenience, be noted in the procedure book, giving the date and stating that the notice has been *mailed* to plaintiff or clerk, as the case may be.

the court, and he shall be entitled to the same fees therefor as a clerk for like services.

Returns by judges of judgment debtors committed.

58. Every judge of a County Court shall make a return to the Provincial Secretary on or before the fifteenth day of January in every year, showing the number of judgment debtors who, during the twelve months ending the thirty-first of December previously were ordered to be committed under each of the five heads mentioned in the one hundred and eighty-second section of the Division Courts Act.

Sec. 177 amended Affidavit required before judgment summons.

59. Section one hundred and seventy-seven of the Division Courts Act is amended by adding thereto the following: "Provided, nevertheless, that before such summons (*u*) shall issue, the plaintiff, his attorney or agent shall make and file with the clerk of the court from which the summons may issue an affidavit stating (1) That the judgment remains unsatisfied in the whole or in part; (2) That the deponent believes that the defendant sought to be examined is able to pay the amount due in respect of the judgment or some part thereof; (3) or, that the defendant sought to be examined has rendered himself liable to be committed to gaol under the Division Courts Act (*v*).

(*u*) One summons only is now necessary, as provided by the next section.

(*v*) The following form of affidavit may be used:

60. Section one hundred and eighty-three of the said Division Courts Act is amended by striking out the word "twice" in the fifth line thereof (*w*). Sec. 183 amended. One service of judgment summons only.

(*Style of Court and Cause*).

"I of the of in the County of , the above plaintiff (*or* attorney *or* the agent of the above plaintiff) make oath and say :

1. That I did on or about the day of 18 , obtain a judgment of this court (*or* obtain a judgment in the Division Court of which has been removed into this court by transcript) against the defendant for the sum of $ for debt (*or* damages) and costs.

2. That the said judgment is still unsatisfied (*or*, unsatisfied to the amount of $)."

3. That I believe the said defendant (*or* the defendant—sought to be examined herein) is able to pay the amount due in respect of the said judgment or some part thereof.

(*or, in place of this last clause, say*)

3. That I believe the said defendant (*or* the defendant ——— sought to be examined herein) has rendered himself liable to be committed to gaol under the Division Courts Act."

Sworn, &c.

Should the judgment be in favour of the defendant against the plaintiff on a set-off it would be necessary to alter the affidavit to meet such case.

It would not be proper to state the last two clauses in the alternative. There might be no objection to both being stated, should the facts warrant it, but there must be a definite statement of one or other before the statute is satisfied (see *Quackenbush et al.* v. *Snider*, 13 C. P. 201, referred to at length, at p. 180 of O'Brien's D. C. Manual).

The last part of this section seems to refer to section 182 of the Division Courts Act, under which a defendant would be liable to be committed if he (1) obtained credit from the plaintiff, or incurred the debt or liability under false pretences or by means of fraud or breach of trust ;

(2) Wilfully contracted the debt or liability without having had at the time a reasonable expectation of being able to pay or discharge the same ;

(3) Has made or caused to be made any gift, delivery or transfer of any property or has removed or concealed the same with intent to defraud his creditors or any of them ; or

(4) Has had at some time since the judgment obtained against him (though he may not still be in that position) sufficient means and ability to pay the same, and has refused or neglected to pay it at the time ordered.

(*w*) Under that section a judgment debtor was not liable to commitment for default in attending examination unless the judge were satisfied that his non-attendance was wilful or that he had failed to appear after being *twice* summoned. The Legislature has now very properly gone back to

R. S. O., c. 67 not affected.

61. This Act shall not affect or apply to the sixty-seventh chapter of the Revised Statutes of Ontario (*x*) or anything therein contained.

Substitutional service.

62. When it is made to appear to the judge upon affidavit that reasonable efforts have been made to effect personal service of the summons upon the defendant, primary debtor or garnishee and either that the summons has come to the knowledge of the defendant, primary debtor or garnishee, or that he wilfully evades service of the same, or has absconded (*y*),

the old practice, doing away with the necessity for a second summons, which was a clumsy device to prevent hardship to the debtor, but in reality gave a privilege which was largely abused and put creditors to unnecessary expense and delay.

Personal service is not required nor was it under the previous enactment. As however only one summons is now necessary, judges will doubtless be very careful in making commitments if there is any doubt as to whether the defendant had received notice of the intended proceedings.

As to the principles involved in this much vexed question of commitment on a judgment summons, see O'Brien's D. C. Manual, p. 173.

(*x*) That is, "An Act respecting arrest and imprisonment for debt."

(*y*) Before the aid of this section can be invoked, the plaintiff must shew—

1. That reasonable efforts have been made to effect personal service; and

2. That the summons has come to the knowledge of the person to be served, *or* that such person wilfully evades service, *or* that he has absconded.

No exact definition can be given of the words "reasonable efforts." Each case must depend on its own circumstances. The effort must include diligent enquiry for the person in all places where he might be expected to be found—at his residence, his place of business, or other places he might be in the habit of resorting to. It might not be sufficient that the bailiff should go there once or even twice. He should, when going to the residence and place of business of the party to be served, inform the person he might there see of the reason of his calling, and endeavour to make an appointment to meet the person he seeks. A copy of the writ should be left either at the residence of the party, or at his place of business, or both, or, if his residence could not be ascertained, the copy might be

such judge may, by order (*z*), grant leave to the plaintiff to serve the writ in such man-

given to some person known to be his associate, or connected with him in any special manner. The bailiff must not only satisfy himself, but also be in a position to satisfy the judge, that all practicable means of effecting personal service have been exhausted; and he must, in the affidavit, give full details of the efforts that have been made in that direction, and also show all other circumstances which would seem to have any bearing on the subject, or assist the judge in forming an opinion.

It has been said that if "the defendant wilfully evade service of the writ, it must be presumed that it has come to his knowledge. If it has come to his knowledge, and he cannot, after repeated efforts, be personally served, it may be presumed that he wilfully evades service." (Harr. C. L. P. Act 19.) If the affidavit shows a general keeping out of the way, together with details of reasonable efforts made to effect personal service, an order would be made.

It will also be sufficient to obtain an order under this section if, in addition to the "reasonable efforts," it be shown that the defendant has absconded. This is an alternative not given in a provision similar to the above in regard to the practice in the Superior Courts. A person may have left the country to avoid payment of his debt, or for fear of punishment, without the writ that it is sought to serve on him having come to his knowledge, or without any evasion of service as to that particular claim. Hence this provision to cover such a case. This order will be granted *ex parte*.

(*z*) If the judge be not satisfied with the efforts that have been made, or as to the other points required by the statute, he will of course refuse the order, and the plaintiff will then probably ascertain wherein the attempted service has been deficient. If, on the contrary, the order is granted, the defendant, if he has suffered injustice by means of it, might apply to the judge for such relief, as the circumstances might warrant, and he doubtless would also be allowed to come in and defend on the merits, on applying to the judge on affidavits setting up his defence and making any necessary explanations, and submitting to any terms that might be imposed for the protection of the plaintiff. In this case he would have to take out a summons calling on the latter to shew cause why the order and subsequent proceedings should not be set aside.

An order allowing substitutional service under this section might be in the following form:

(*Style of Court and Cause.*)

"Upon reading the affidavit of , and on the application of the said plaintiff, and it appearing that reasonable efforts have been made to effect personal service without success, and that (*here state the other conditions required before the order can be made*) I do order that the said plaintiff may serve the said writ of

ner, at such place, or upon such person for the defendant, primary debtor or garnishee, as to him may seem proper, and may grant leave to the plaintiff to proceed as if personal service had been effected, subject to such conditions as the judge may impose.

Costs of witnesses in certain cases.

63. Where the defendant having disputed the plaintiff's claim *(a)*, afterwards and before the opening of court confesses judgment *(b)*, or pays the claim so short a time before the sitting of the court that the plaintiff cannot in the ordinary way be notified thereof *(c)*, and without such notice the plaintiff *bona fide* and reasonably incurs expenses, in procuring witnesses or in attending at court *(d)*, the judge

summons and claim herein together with this order by (*here insert the direction as to service given by the judge*) and that this shall be sufficient as a service on the said defendant, pursuant to section 62 of the Division Court Act, 1880. And the said plaintiff may thereupon in due course proceed herein as if personal service had been effected.

Dated, &c.

Judge, &c."

The proceedings thus directed by the judge should then be carried out in strict accordance with the order, and an affidavit made thereof, which should then be filed in the ordinary manner.

It must be remarked that under this section the necessity for issuing an attachment against a concealed or absconding debtor under section 190 of the Division Courts Act seems largely superseded, inasmuch as that proceeding was heretofore the only mode to which the creditor could resort to effect substitutional service.

(a) See O'Brien's D. C. Manual, pp. 77, 270.

(b) See O'Brien's D. C. Manual, p. 142.

(c) That is, under section 56 of this Act, or under rule 95.

(d) The party must, have incurred the expense in good faith, before receiving notice of the confession or payment, and in the reasonable belief that these witnesses would be required. The witnesses must have been necessary and material to establish the plaintiff's case or to rebut the defence. That they were not called,

may, in his discretion, order the defendant to pay such costs or such portion thereof as to him may seem just.

Sec. 163 amended: renewal of execution.

64. Section one hundred and sixty-three is amended by striking out the words "thirty days" where the same occurs in the fourth line thereof, and by substituting therefor the words "six months" (*e*).

Costs in garnishee cases.

65. The judge in any case brought to garnish a debt, may, in giving judgment on behalf of the primary creditor, award the costs of the proceeding to the primary creditor out of the amount found due from the garnishee to the primary debtor, anything in the Division Courts Act to the contrary notwithstanding (*f*).

would be no reason against the allowance of the fees. (See note (*p*) to Rule 147 in O'Brien's D. C. Manual, p. 315.)

The general rule is that the clerk is to determine, subject to appeal to the judge, what number of witnesses should be allowed on taxation of costs. (See Rule 147, and section 88 of the Division Courts Act. See also section 154 of the Division Courts Act, and Form Q, in O'Brien's D. C. Manual, p. 422, which may easily be adapted to the object of this section.)

(*e*) The writer pointed out, on page 153 of his Manual, some difficulties in reference to the procedure under the section here referred to, but suggested that the true remedy was for the bailiff to act promptly. It is, in fact, his direct interest to do so, for otherwise he might forfeit his fees. This provision does not give the bailiff any longer time to act under the writ unless the creditor chooses to extend the time by exercising the right of renewal, which is entirely in his own power. The change seems beneficial.

(*f*) See section 133 of that Act.

This is a very proper provision and would reasonably be enforced whenever there is money enough due by the garnishee to the primary debtor to cover the costs which the primary creditor has been put to in the garnishee proceedings.

This section apparently applies only to cases which come before a judge for judgment; so that in other

Board of County Judges to make rules.

66. The Board of County Judges, or any three of them, may frame general rules and forms concerning the practice, and in relation to the provisions of this Act, in as ample a manner as they may now make and frame such rules and forms under the powers conferred by the Division Courts Act, but subject nevertheless to the like restrictions and conditions, and to the approval, disallowance or amendment thereof by the judges of the Superior Courts of law, as in the case of rules and forms framed by them by virtue of the powers conferred by the said Division Courts Act.

Pending proceedings not affected.

67. This Act shall not affect any action or proceeding pending at the time of the passing thereof (*g*).

Act part of D. C. Act.

68. This Act shall be read with and as part of the Division Courts Act, and the general rules, forms, practice, procedure and fees applicable to Division Courts shall apply thereto, and to proceedings thereunder.

cases the law remains as it was before this section was passed.

(*g*) An action is "pending" from the issuing of process until judgment has been pronounced; and so it is considered that when the latter event takes place the retainer of an attorney ceases. The word "proceeding" may be supposed to refer to some steps taken in the cause, subsequent to the hearing. It would seem, therefore, that this Act would not apply to a proceeding before judgment in any action in which the summons was issued before the 5th March, 1880, when the Act was assented to, nor to any proceedings subsequent to judgment commenced before that date. If, for example, a judgment summons had been issued before the 5th March, no affidavit would be necessary under section 59, but if such a summons were issued after that date, it would be necessary, although the suit might have been commenced before the passing of the Act.

[SEC. 66.

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APPENDIX

OF RECENT DECISIONS.

JURISDICTION.

STEPHENS v. LAPLANTE.

Prohibition.

On an application for prohibition to a Division Court, after judgment and execution, where the question of jurisdiction depends upon disputed facts, —as, in this case, upon whether the person, by whom the bargain sued upon was made, acted as plaintiff's or defendant's agent; if the Division Court Judge has decided this question on evidence, and found in favour of his jurisdiction, the Court will not interfere with his finding; but here, there having been no such decision, and the want of jurisdiction being clear upon the affidavits filed, a prohibition was granted.

[8 Prac. Rep. 52.]

In November, 1878, the plaintiff, as assignee of the estate of McMichael & Hughson, sued the defendant in the Fourth Division Court of the County of Kent for the price of certain goods. Defendant filed a dispute note, and in the note took objection to the jurisdiction of the Division Court in which the case was entered, claiming that the whole cause of action arose within the jurisdiction of the First Division Court of the County of Peterborough.

Judgment was given in favour of the plaintiff, and an execution was issued against the defendant for the amount of the claim.

Shepley, for defendant, obtained a summons for a prohibition to the Fourth Division Court of Kent, on the ground of want of jurisdiction.

Aylesworth shewed cause.

The plaintiff's affidavits stated that the contract for the sale in question had been made by Michael & Hughson, in Kent, with one Finlay, who at the time represented himself to be the agent of the defendant. The defendant stated that Finlay had sold the goods

to him in Peterborough, representing himself to be the agent of McMichael & Hughson. Counsel for the plaintiff urged that, at the trial, before the Judge could give a verdict for the plaintiff he must have been satisfied that Finlay was defendant's agent, and that his finding was not open to review.

HAGARTY, C. J.—On the facts appearing in the affidavits filed, I think it clear that the Division Court had not jurisdiction, as the whole cause of action did not arise within the division : *Noxon* v. *Holmes*, 24 C. P. 541.

If Finlay were defendant's agent, and made as such a bargain with plaintiff in Kent, to ship goods at a station in Kent, it might be argued that the cause of action wholly arose there.

But if Finlay were plaintiff's agent, selling those goods to defendant in Peterborough, it would be impossible to support the jurisdiction. Then the jurisdiction depends on what is the truth.

If the learned Judge below had decided on evidence that Finlay was defendant's agent, I would not enter into any review or criticism of his decision on the merits ; or if any proof by Finlay or other witness of his being such agent were given, I would not interfere.

As I understood the report, which the learned Judge has kindly furnished at my request, at the trial one of the parties swore that the goods were supplied to defendant on the order of Finlay, his agent, to be delivered on the cars there. This proves merely that the goods were ordered by a person professing to be defendant's agent. The Clerk of the Court produced a letter purporting to be from defendant, objecting to the jurisdiction.

Then we have the very clear statement of the defendant wholly denying the agency, and that he had no dealing with McMichael & Hughson except this one, when Finlay came to him in Peterborough, as plaintiff's agent, and got an order for the goods. Then Finlay swears positively that he was the agent of McMichael & Hughson in the sale, and never acted as defendant's agent ; and that he got the order from defendant at Peterborough as said firm's travelling agent ; and that they, or their assignee, have paid him

his commission therefor. I do not think the affidavits filed by the plaintiff displace the strong case made for defendant.

I consider that the learned Judge has found nothing on the disputed question in the way of determining it.

As I think the facts clear, I am reluctantly compelled to allow the writ of prohibition.

KING v. FARRELL.

Cheque—Cause of Action.

The defendant, who resided within the limits of the Tenth Division Court of the County of York, drew a cheque in the plaintiff's favour, within the limits of the First Division Court of the same county, upon a bank situate in the Tenth Division. The cheque having been dishonoured, the plaintiff sued upon it in the First Division Court. *Held*, that the action was improperly brought there, and that a summons for a prohibition thereto, on the ground of want of jurisdiction, must be made absolute.

[8 Prac. Rep. 119.]

The plaintiff sued the defendant upon a cheque drawn within the limits of the First Division Court of the County of York, and made payable at a bank situate within the limits of the Tenth Division Court of the same county. The defendant also resided within the limits of the Tenth Division Court. The cheque was dishonoured upon presentment, and the plaintiff entered the suit in the First Division Court. The defendant appeared at the trial, and objected that the Court had no jurisdiction, on the ground that the whole cause of action did not arise within that Division. The acting Judge held that the fact of the cheque having been drawn within the limits of the First Division Court was sufficient to give jurisdiction. Judgment was accordingly entered for the plaintiff. The defendant then obtained a summons for a prohibition on the ground of want of jurisdiction.

Ritchie showed cause.

Galbraith supported the summons.

OSLER, J.—I regret to be compelled to give effect to this objection, inasmuch as it appears plainly that the defendant has no *bona*

fide defence to the plaintiff's claim, and is defending only for time. The cheque was made in the First Division, and was payable at a bank situate within the Tenth Division. It operated as a payment until it was presented and payment refused, and the plaintiff had to prove presentment and dishonour, in order to maintain this action. The whole cause of action, therefore, did not arise in either Division. "Cause of action has been held from the earliest times to mean every fact which is material to be proved in order to enable the plaintiff to succeed—every fact which the defendant would have a right to traverse." *Cook* v. *Gill*, L. R. 8 C. P. 107, per Brett, J. "Everything that is requisite to show the action to be maintainable, is part of the cause of action:" *Borthwick* v. *Walker*, 15 C. B. 501; *Watt* v. *Van Every*, 23 U. C. R. 196. All the cases are discussed in *Noxon* v. *Holmes*, 24 C. P. 541.

It is plain that the present case has been entered in the wrong Division Court, and the summons must be made absolute for a prohibition.

In re Hagel v. Dalrymple.

Cause of Action—Letter.

The defendant, residing at Port Elgin, by letter instructed the plaintiff, an attorney at Toronto, to take certain legal proceedings. The plaintiff, having performed these services, brought the present suit in a Division Court at Toronto, to recover his fees.

Held, that the cause of action arose partly in each place, and that a prohibition should issue.

[8 Prac. Rep. 183.]

This was an application for a writ of prohibition to the First Division Court of York, on the ground of want of jurisdiction.

The defendant, who resides at Port Elgin, wrote to the plaintiff, a solicitor, at Toronto, instructing him to take certain legal proceedings. These proceedings were taken, and the solicitor afterwards sued the client to recover the amount of his bill of costs in the First Division Court of York, at Toronto. The defendant then obtained a summons for a prohibition.

Murdock shewed cause, and contended that the post office autho-

rities were the defendant's agents to deliver his letter to the plaintiff at Toronto, and that the contract was by these means as fully completed at the latter place as if the defendant had come personally and given instructions.

G. T. Blackstock supported the summons, and claimed that the whole cause of action did not arise at Toronto, and that consequently the action should have been brought where the defendant resided. He cited *Noxon* v. *Holmes*, 24 C. P., 541; and *Watt* v. *Van Every*, 23 U. C. R. 196.

HAGARTY, C. J., held, that to entitle the plaintiff to succeed in the suit he would have to prove the writing of the letter at Port Elgin, and the writing of it there became part of plaintiff's cause of action. The whole cause of action did not, therefore, arise in Toronto, but partly in each place.

Summons made absolute, but without costs.

IN RE HOLLAND v. WALLACE ET AL.

Garnishee.

A plaintiff in a Division Court, proceeding against a primary debtor and a garnishee in a Court which would not have jurisdiction against the primary debtor alone, must prove a garnishable debt in the hands of the garnishee; otherwise, a prohibition will lie.

A garnishee is not a defendant within the meaning of R. S. O. ch. 47, sec. 62.

[8 Prac. Rep. 186.]

On the 29th of August, 1879, a summons was issued from the First Division Court of York, calling on the defendant Wallace, as the primary debtor, and on Hallam as garnishee, in the usual form, to appear at the Toronto Court House on the 30th September following. By affidavits indorsed, it appeared that service was made on the garnishee on the 30th of August, and on Wallace on the 17th of September. The plaintiff lived in Toronto, where Hallam the garnishee also resided. The defendant Wallace lived in Lindsay, where a note, the cause of action, was dated. The note was made payable at the plaintiff's office, in Toronto. Wallace, on

being served, was advised by his attorney that the service was void, as he ought to have been served twenty days before the return day. He therefore took no notice of it. Defendant's affidavit stated that on the 3rd of January he was casually informed by the clerk of the Lindsay Court that a transcript of a judgment against him had been received from the Toronto Court, and this was his first intimation that proceedings had been continued on the summons, he having expected another summons. It appeared, from information received from the Clerk of the Court, that at the sittings of the Court at Toronto on the 30th of September, on account of the summons not having been served on Wallace twenty days before the sittings, the case was allowed to stand over till the next Court, held on the 28th of October, when the case was tried and judgment given against Wallace, but in favour of Hallam, the garnishee. No affidavit was filed shewing the actual proceedings in the Court.

The defendant then obtained a summons for a prohibition, on the ground that the summons should have been served twenty days before the return day, according to the provisions of the R. S. O. ch. 47, sec. 71, the defendant not residing in the county or adjoining county; that he had not been served with process in due time; and that there was no real garnishee.

Thorne, for the plaintiff, shewed cause.

H. Cameron, Q. C., supported the summons.

9th February, 1880. HAGARTY, C. J.—It seems clear that the Toronto Court had no original jurisdiction over Wallace, the whole cause of action not having arisen within its limits. It is only under the garnishment clauses of the Act it is pretended that he can be reached. I am of opinion that the garnishee cannot be considered a defendant within the meaning of section 62 of the Division Courts Act, R. S. O., ch. 47. As a matter of fact, there was no right whatever here to proceed against Hallam as a garnishee. There must be a debtor to the primary debtor, and a debt to garnish, under section 124, which gives the general right, and under section 130, *et seq.*, on which these proceedings depend. As soon, therefore, as it was ascertained that Hallam was not a debtor to Wallace, there

ceased to be a garnishee ; and the jurisdiction, in any view of the statute, ceased to exist as against Wallace. It was on mere surmise or suspicion that Hallam's name was used.

I think any plaintiff, before judgment, venturing to proceed against a debtor, over whom, by himself, a Division Court has no jurisdiction, must run the risk of being able to prove that the person whom he chooses to call a garnishee is really such, and that there is a debt capable of being garnished. Otherwise, the insertion of the name of any friend, willing to allow his name to be so used, would create a jurisdiction not otherwise existing ; a process that could always be resorted to. The summons must be absolute for a prohibition.

I do not wish to be understood as expressing any opinion to the effect that the existence of a true garnishee, and a garnishable debt, gives jurisdiction, not otherwise existing, against a primary debtor. It is not now necessary to discuss that question.

As the defendant Wallace did not take any notice of the summons served on him, or object to the Court's jurisdiction over him, I give no costs.

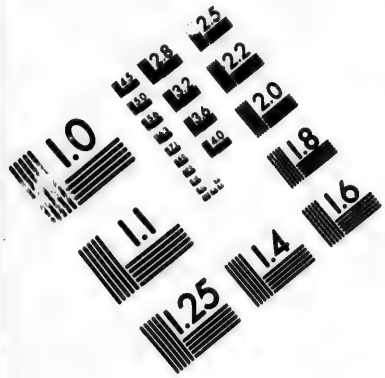
Summons made absolute.

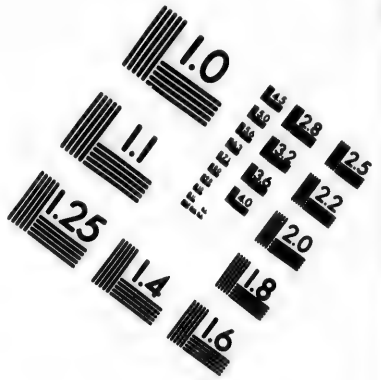
EXECUTION.

Hincks v. Sowerby.

Seizure—Abandonment—Waiver of.

Under an execution against one R., the plaintiff's son, the bailiff wrote "seized" on part of a sawing machine belonging to R., but then on the premises of one S., which could not be moved owing to the roads being blocked with snow. and he went to the plaintiff's where the other part of the machine was, and told the parties that he seized it. He did nothing further for four months, when he removed the machine a few days before he advertised it for sale. R. made no objection to the sale, which, however, was sold to S. with the full privity of R. Subsequently the plaintiff purchased it from S., R. having offered, as an inducement, to give him certain parts of the machine which he had concealed from the bailiff. After the purchase R. had, with the plaintiff's permission, the use of the





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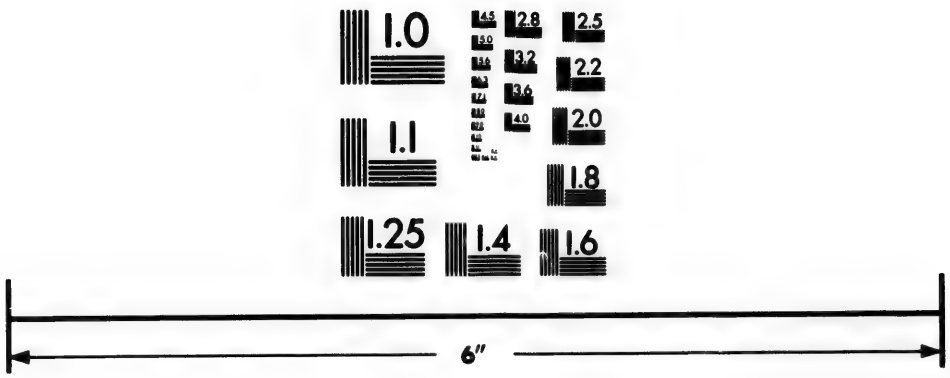

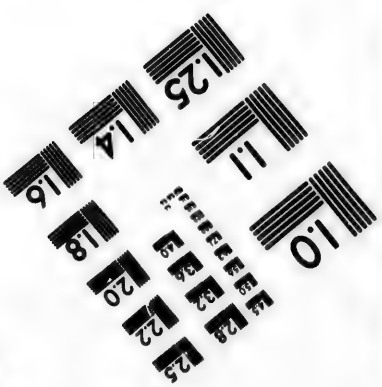

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machine. Some time afterwards R. made a chattel mortgage of the machine to the defendant.

Held, reversing the judgment of the County Court, that the seizure was valid, and that there was no evidence of an abandonment; but that even if R. had had the right to insist that there had been an abandonment, he had clearly waived it, and had authorized the purchaser, S., to transfer an absolute title to the plaintiff.

[4 App. Rep. 113.]

APPEAL from the County Court of the County of Huron.

This was an action of replevin brought by the plaintiff for a sawing machine which the defendant claimed by virtue of a chattel mortgage made to him by the plaintiff's son, Ralph Hincks. It appeared that on the 14th February, 1875, a writ of *fi. fa.* issued out of a Division Court against Ralph Hincks, under which the bailiff proceeded to the premises of one Salkeld, where part of the machine in question lay, and wrote on it the word "Seized," but he could not remove it owing to the roads being blocked up with snow. Another part of the machine was on the premises of the plaintiff, and the bailiff went to it, and told the parties that he seized it. He did nothing further until the 23rd of June, when he took it into his possession a few days before he advertised the sale. Ralph Hincks made no objection to the sale taking place, and asked his father to attend the sale for the purpose of purchasing the machine, which, however, he did not do. One Salkeld bought the machine, and subsequently sold it to the plaintiff. Ralph Hincks had urged the plaintiff to buy it, offering to give him certain parts of the machine which he had concealed from the bailiff. The machine, which had been injured, was repaired at the plaintiff's expense. It was shewn that Ralph had had the use of the machine afterwards, but it appeared that he had used it with the plaintiff's permission.

On the 18th June, 1877, Ralph Hincks made a chattel mortgage of the machine to the defendant.

The learned County Court Judge Squier, before whom the case was tried, entered a verdict for the defendant. Subsequently a rule *nisi* to set aside the verdict was discharged, on the ground that there had been an abandonment of the seizure.

The plaintiff appealed.

The case was argued on the 5th of March, 1879.

F. Osler (*Garrow* with him) for the appellant. The evidence shews a valid seizure, and sale thereunder: *Gladstone* v. *Padwick*, L. R. 6 Ex. 203; *Hayden* v. *Crawford*, 3 O. S. 583; *Walton* v. *Jarvis*, 14 U. C. R. 640; *Hamilton* v. *Bouck*, 5 O. S. 664. The question of abandonment is one of intention, and there was clearly no evidence of intention to abandon the goods in question here: *Gould* v. *White*, 4 O. S. 124. The presumption is in favour of the regularity of the bailiff's proceedings, and nothing was shewn here to rebut this presumption: *Mitchell* v. *Greenwood*, 3 C. P. 465; *Boulton* v. *Ferguson*, 5 U. C. R. 515. But in any event the evidence establishes that Ralph Hincks waived the irregularities, if any: *Harley* v. *McManus*, 1 U. C. R. 141; *Tiffiny* v. *Miller*, 6 U. C. R. 426. Moreover Ralph Hincks is estopped by his conduct in connection with the sale to the plaintiff from disputing the plaintiff's title or asserting any title in himself to the machine: *Pickard* v. *Sears*, 6 A. & E. 369; *Gregg* v. *Wells*, 10 A. & E. 90.

C. Robinson, Q.C., for the respondent. The chattel in question was under the value of $60, and an article by which Ralph Hincks obtained his living and, therefore, was exempt from seizure: R. S. O. ch. 66, sec. 6; R. & J.'s Digest, 1417. The plaintiff must claim through a valid sale; *Clarke* v. *Garrat*, 28 C. P. 75; the facts, however, did not prove a valid seizure or anything approaching a seizure till the 23rd of June, when the execution had expired; *Culloden* v. *McDowell*, 17 U. C. R. 359; *Carroll* v. *Lunn*, 7 C. P. 510; *McIntyre* v. *Crysler*, 4 C. P. 248; Atkinson on Sheriffs, 192, 193. If, however, it is held that there was sufficient to constitute a valid seizure then we submit that the evidence shews that it was abandoned: *Craig* v. *Craig*, 7 P. R. 209; R. & J.'s Digest 1436-1455. If Ralph Hincks's conduct created any estoppel it is met by an estoppel on the part of the plaintiff, who allowed him to deal with the machine as his own; but there was no estoppel proved: *Lines* v. *Grange*, 12 U. C. R. 209.

March 22nd, 1879. Moss, C. J. A., delivered the judgment of the Court.

We think that what was done by the bailiff was sufficient to constitute a seizure. In considering what acts must be done to amount

to an actual seizure, regard must be had to the circumstances. For example, in *Nash* v. *Dickenson*, L. R. 2 C. P. 252, it was held that the mere production of the warrant to the defendant upon his premises, and demand of the debt and costs without doing or saying anything more, was not a seizure. There it did not appear on what he could well have levied; and he did not even profess to make a seizure. In *Balls* v. *Thick*, 9 Jur. 304, Lord Denman expressed the opinion that any act done by a person having authority which distinctly intimates to the party that he intends to execute the writ, is sufficient to constitute a seizure. That would seem to shew that much depends upon the nature of the chattels, their position and other surrounding circumstances. In the important case of *Gladstone* v. *Padwick*, L. R. 6 Ex. 202, it was said by Bramwell, B., to be clear that the sheriff need not lay his hand upon a single article. Here, part of the machine was in the premises of a person named Salkeld, and the bailiff marked that part with the word "seized." Another part was in the premises of the present plaintiff, with whom Ralph Hincks was then residing, and the bailiff went to it and told the parties that he seized it. The roads were blocked with snow, and it was impossible for him to remove the machine at that time. He could not be expected to have slept in the open air himself and to have kept another man in order to watch and keep physical control over these parts of a machine, which was scarcely worth $15.

In this connection, the remarks of Brayley, J., in *Swann* v. *The Earl of Falmouth*, 8 B. & C. 456, are very pertinent. There are authorities in our own Courts to the same effect, but it is not necessary to pursue that enquiry further for we collect from the observations of the learned Judge of the County Court that in his opinion there was a seizure, but that there was an abandonment. As that is generally a question of fact, we would not readily dissent from the conclusion of the learned Judge. But it appears to us to be open to serious question. There certainly was no intention by the bailiff to abandon, and it is equally certain that the execution debtor did not suppose that there was an abandonment, for the

bailiff was permitted to remove the machine without objection or remonstrance.

The subsequent conduct of the execution debtor, to which we shall have occasion presently to direct attention, shews conclusively that he supposed the seizure to be continued. The case seems to closely resemble that which was present to the mind of Lord Denman, when he suggested in *Balls* v. *Thick*, 9 Jur. 304, that there ought not to be an abandonment if the position of the parties is not altered, and the defendant had full notice that it was to be considered a seizure, and not claim the chattel. But even if Ralph Hincks had the right to insist that there had been an abandonment, he seems to have waived it in the most distinct manner. He knew the sale was about to take place, and instead of objecting to it, he requested his father to attend and purchase. With this request his father did not comply, and accordingly Salkeld became the purchaser. It is no strained conjecture from what the evidence discloses of their previous and subsequent dealings, that this was done with the full privity of Ralph Hincks. Then the plaintiff is urged by Ralph to buy from Salkeld, and as an inducement, Ralph offers him certain parts of the machine which he concealed from the bailiff, confessedly with the object of rendering it useless and valueless. His father then consents, and the machine is bought.

The object which Ralph had in view was no doubt that he might, through his father's bounty, enjoy the use of the machine, when it was repaired and fitted to work; but it is clear that this was all the advantage he expected, for he was then embarrassed, and had no idea of becoming the owner. The machine was repaired at the plaintiff's expense, Ralph not only being cognizant of this, but assisting in the work. After all this he could never be heard in a court of justice, to urge that Salkeld did not acquire a good title at the bailiff's sale, and transfer such a title to his father. If he still had any interest in the chattel, he constituted Salkeld his agent, to transfer it to the plaintiff, and the transfer was completed by the delivery of possession. He was not simply estopped from denying his father's title, but he had empowered Salkeld to transfer to him an absolute title. The circumstance that he was afterwards per-

mitted by his father to use the machine, and enjoy its full benefit, does not destroy that title, for there is nothing in the evidence upon which to ground an inference that this was in consequence of any gift of the machine itself. Upon these facts it requires no argument to establish that nothing passed to Sowerby by his chattel mortgage. We think, therefore, that the plaintiff was entitled to succeed, and that the appeal must be allowed; with costs, and the rule *nisi* in the Court below made absolute to enter a verdict for the plaintiff. We do not know what opinion the learned Judge formed with regard to the actual value of the machine at the time the defendant took it out of the plaintiff's possession, but upon that will depend the plaintiff's right to recover his full costs of suit.

Appeal allowed.

BAILIFF.

NERLICH ET AL. v. MALLOY ET AL.

Action for false return.

To an action against a Division Court Bailiff and his sureties for neglect to execute a writ or return it in due time, and for a false return, the defendants pleaded that the execution was not enforced owing to a threat by the principal creditors of the debtor to place him in insolvency if it was proceeded with, and that while the goods were being advertised for sale an attachment was issued against the debtor, and the plaintiffs suffered no damage in consequence of the breaches alleged.

At the trial the jury were directed to find a verdict for the defendants, on the ground that this plea and another had been proved.

Held, reversing the judgment of the County Court of York, that it was for the jury, and not for the Judge, to say whether the bailiff's inaction had caused the plaintiffs damage, and a new trial was therefore ordered.

Semble, also, that under section 221 of the Division Courts Act, R. S. O. ch. 47, the plaintiffs were entitled to nominal damages upon proof of a breach of duty without shewing any actual damage.

Before the commencement of this action the plaintiffs had taken summary proceedings against the bailiff for neglecting to levy under section 220, when their complaint was dismissed.

Held, no bar to this action, which was brought under sec. 221.

[4 App. Rep. 430.]

Appeal from the County Court of the County of York.

The appellants, who were plaintiffs in a Division Court suit, in which an execution had been delivered to the defendant Malloy, as bailiff, declared against him and his sureties, alleging as breaches of the statutory bond neglect to execute the writ, neglect to return the writ within three days after the return day, and a false return of no goods. Several grounds of defence were set up by various pleas, of which it is only necessary to notice the third and the fourth.

The third plea alleged that the defendant Malloy received the writ on the 13th May, 1876; and before the alleged grievance, and on the same day, levied upon the goods of said Henderson, and before the same were removed and sold, and immediately after the seizure the said defendant was notified in writing by the attorney for one of the principal creditors of the said Henderson, that if Malloy proceeded with the sale of said goods immediate proceedings would be taken to place Henderson in insolvency; and afterwards, and before said goods were sold, and while they were being advertised pursuant to the statute, a writ of attachment duly issued against Henderson, who duly made an assignment of his estate under the provisions of the Insolvent Act of 1875, and the goods under seizure became the property of the assignee, and thereupon Malloy gave up the seizure and returned the writ according to law, and that the plaintiffs suffered no damage by reason of the alleged breaches.

By the fourth plea the defendants set up, that, after the return of the execution, a summons was obtained in Chambers in the Division Court suit, calling on Malloy to shew cause why he should not be ordered to pay into Court to the credit of the cause the amount of damage alleged to be sustained by the plaintiffs by reason of his neglect, connivance or omission; and that both the parties appeared, and the Judge, after hearing them, discharged the summons with costs; and that the order still remained in force, and the cause of action mentioned in such summons, and the breaches alleged in the declaration, were the same.

At the close of the evidence the learned Judge practically withdrew the case from the jury, and directed a verdict for the defendants, on the ground that these pleas had been completely proved. In Term he refused a rule *nisi*, which was moved for on the ground that the verdict was contrary to law and evidence, and for the rejection of evidence. His judgment upon that motion was founded upon the view he entertained of the effect of the fourth plea. At the trial proof was given of the copy of the summons served upon the bailiff, which was substantially in accordance with the statement in the plea, and upon which was endorsed the Judge's order of dismissal. The plaintiff's counsel desired to adduce evidence to shew that the discharge of the order had not proceeded upon any consideration of the merits, but the learned Judge ruled that such evidence was inadmissible. No proof was given of the identity of the complaint then urged by the plaintiffs with their present cause of action beyond that suggested by the terms of the summons. In *banc* the learned Judge held that the order was in the nature of a judgment, and concluded the plaintiffs.

The plaintiffs appealed.

The case was argued on the 11th November, 1879.

J. O'Donohoe, for the appellants. The learned Judge was wrong in refusing to admit the evidence tendered to shew that the order made by the Division Court Judge was not conclusive, owing to its having been made without hearing evidence. But the order could not, in any event, have acted as an estoppel, so as to preclude the plaintiffs from bringing this action, as the order only dealt with the damages sustained by the plaintiffs by reason of the neglect in not levying, while this action is for neglecting to return, and making a false return of the writ, under the 221st section of the Division Courts Act, R. S. O. ch. 47. The order was not proved in the manner pointed out by R. S. O. ch. 47, sec. 37: *Regina* v. *Rowland*, 1 F. & F. 72; *Dewes* v. *Rily*, 11 C. B. 434. *Brown* v. *Wright*, 35 U. C. R. 378, will be cited to shew that the bailiff is not liable for neglecting to enforce the execution, owing to the debtor's threat to go into insolvency, but in that case the assignment had

been made before the writ was placed in his hands. It is clear that the Judge had no power to withdraw the case from the jury.

J. E. McDougall, for the respondent. The remedy against bailiff's under sections 220 and 221 of the Division Courts Act are clearly in the alternative ; and inasmuch as the plaintiffs elected to proceed summarily, the order made thereon is a complete bar to this action ; Bigelow on Estoppel, 45, 2nd ed. ; *Brown* v. *Yates*, 1 App. R. 374 ; *Austin* v. *Mills*, 9 Ex. 288. The order was sufficiently proved by the production of the original, duly signed by the Judge : *Stett* v. *Halford*, 4 Champ. 17 ; R. S. O. ch. 62, sec. 30. At any rate we are entitled to succeed on the third plea, as the evidence shews that no damage was sustained by the neglect to make a seizure, and it is well laid down that in such a case there can be no recovery : *Brown* v. *Wright*, 35 U. C. R. 378 ; *Stimson* v. *Farnham*, L. R. 7 Q. B. 175 : *Hobson* v. *Thellusson*, L. R. 2 Q. B. 642.

November 12th, 1879. Moss, C. J. A., delivered the judgment of the Court. We gather from the report of the learned Judge's decision that he was of opinion that the plaintiffs had an election between adopting a summary procceding by way of summons and bringing an action upon the bond, and that having taken the former course the order operated as a final and conclusive adjudication upon their rights. Considering the smallness of the amount at stake, and the protracted litigation of which it has been the subject, for the matter seems to have been twice brought down to trial already, we should not have been sorry to see our way to the same conclusion, but we are constrained to hold it untenable.

Without relying upon the argument that if, as the plaintiffs sought to prove, the summons were dismissed upon a technical objection, and without any adjudication upon the merits, the order ought not to bar the present action, it is only necessary to refer to the 220th section of the Division Courts Act, under which the summons was issued, to perceive that the questions with which the Judge was authorized to deal are not co-extensive with the plaintiffs' cause of action. That section enacts that in case the plaintiff, by neglect, connivance, or omission, loses the opportunity of levy-

ing, then upon complaint of the aggrieved party and proper proof the Judge shall order the bailiff to pay such damages as it appears the plaintiff has sustained ; but it does not profess to give any summary remedy for neglect to return an execution within three days after the return day, or for making a false return. These breaches of duty are dealt with by the following section, which entitles the plaintiff to maintain an action against the bailiff and his sureties upon their covenant, and to recover the amount of the execution with interest, or such less sum as, in the opinion of the Judge or jury, the plaintiff under the circumstances is justly entitled to recover. As these are the plaintiffs' main grounds of complaint, it is very obvious that his remedy was not to be found in the exercise of the summary jurisdiction, but in an action. Upon this distinct ground we must hold that the fourth plea was not, and indeed could not be, established.

The learned counsel for the defendants seemed to feel the difficulty of supporting the verdict upon this issue, but he relied strongly upon the other plea. This was in substance that the bailiff immediately levied, but that he was at once notified by the attorney for one of the principal creditors of the execution debtor that if he proceeded to sell the debtor would be placed in insolvency, and that before the goods were sold, and while they were being advertised pursuant to the statute, a writ of attachment was issued, and an assignee in insolvency appointed, whereupon the bailiff gave up the seizure and returned the writ, and that the plaintiff suffered no damage. It appeared from the evidence of the bailiff himself that he received the execution on the 13th of May, 1875, and at once went to the debtor's place of business and demanded payment, when the debtor declared that if he was pressed he would make an assignment in insolvency. On the same day the debtor's attorney gave him a written notice, that if he pressed the execution other creditors would place the defendant in insolvency, and the execution would be rendered valueless. In consequence, as he alleges, of this notification, the bailiff did not take proceedings to sell, but the debtor continued to carry on his business as usual, the bailiff contenting himself with frequently visiting the shop. On the 10th

of June he procured a renewal of the execution for thirty days, without any communication with the plaintiffs, and being pressed by their attorneys to make the money, advertised the goods for sale on the 16th June, whereupon the debtor was placed in insolvency, and the assignee took possession before any sale was effected.

Hence it is argued, upon the authority of *Hobson* v. *Thellusson*, L. R. 2 Q. B. 642, and *Brown* v. *Wright*, 35 U. C. R. 378, that the plaintiffs sustained no damage in consequence of the delay in enforcing the execution, and that the action is not sustainable. We entirely agree with the doctrine enunciated in these cases. That doctrine is, that where the evidence demonstrates to the satisfaction of the tribunal dealing with the facts, that if the execution had been proceeded with in the ordinary course the plaintiff would have derived no benefit, because the debtor would have been placed in bankruptcy or insolvency before he could have realized, the plaintiff must fail. Damage being of the essence of the action, it follows that where the plaintiff has suffered none, the defendant must succeed. That rule, it may be observed, does not seem to apply in its entirety to the case of an action against the bailiff and his sureties for neglect to return an execution, or for a false return. The 221st section, to which reference has already been made, appears to give the plaintiff the right to recover something where there has been such breach of duty by the bailiff, and therefore he is probably entitled to nominal damages upon the bare proof of the breach without shewing any injury. But this is a question of little or no practical importance. The difficulty here in the way of sustaining the verdict, which appears to us to be insuperable, is, that the plaintiffs had a right to have the opinion of the jury upon this matter. It was for them, and not for the Judge, or for us, to say whether, under all the circumstances, the action or inaction of the bailiff had caused the plaintiffs damage. If we were at liberty to speculate upon probabilities, we might think that they were likely to lean to the defendant's contention; but it may be that they would have found that if the bailiff had pressed the execution, so small an amount would have been paid in order to avert proceed-

ings in insolvency. The court was not embarrassed with this difficulty in *Hobson* v. *Thellusson*, L. R. 2 Q. B. 642, because they were at liberty to draw inferences of fact, and, acting as jurymen, they found that the plaintiff had sustained no damage. The case of *Brown* v. *Wright*, 35 U. C. R, 378, was even clearer in favour of the defendant, for the assignment in insolvency had actually been executed before the execution was issued. There were, therefore, no goods, the property of the execution debtor, upon which a levy could be made.

The proper course was for the learned Judge to have held that the fourth plea was not proved, and to have left it to the jury to say whether, if the bailiff had proceeded regularly upon the execution, the debtor would have been placed in insolvency, and a recovery thus prevented ; and to have directed them that if this would have been the result, the plaintiffs could only recover nominal damages, under the 221st section ; but that otherwise, as there were goods of ample value to satisfy the execution, the plaintiffs were entitled to a verdict for their full claim.

The appeal must be allowed, with costs, and a rule must issue in the Court below for a new trial, without costs.

ADDITIONAL

RULES AND ORDERS

FOR

THE DIVISION COURTS.

PROVINCE OF ONTARIO.

We, the undersigned, "the Board of County Judges," acting under and in pursuance of the powers vested in us by "the Division Courts Act," have framed the following additional General Rules and Orders, to be in force from and after the first day of January, A.D. 1880, until otherwise ordered; and we do certify the same to the Honourable the Chief Justice of the Court of Queen's Bench of the Province of Ontario accordingly.

RULES.

RULE No. 171.—From and after the first day of January, A.D. 1880, Rule No. 170, of the Supplementary General Rules of the 26th June, 1874, and Schedule of Clerk's Fees (Form 127), and Schedule of Bailiffs' Fees (Form 128), shall be rescinded; and from and after the said first day of January, 1880, the fees set forth in the tariff hereto annexed, marked "Schedule of Clerks' Fees" (Form 130), and "Schedule of Bailiffs' Fees" (Form 131), shall be the fees to be received by the several Clerks and Bailiffs of Division Courts in Ontario, for and in relation to the duties and services to be performed by them, as officers of the said Courts, and shall be in lieu of all other fees heretofore receivable.

RULE No. 172.—At the opening of every Court, and at such other times as the Judge shall require, the Clerk shall lay before the Judge the returns of Bailiffs under Rule 93, duly certified under Rule 94.

RULE No. 173.—The Clerk shall, at every sitting of the Court, report in writing to the Judge as to the several sureties of himself and the Bailiff or Bailiffs of his Court, whether any of them have died, become insolvent or left the County since his last report, and mentioning any facts connected therewith which ought to be made known to the Judge.

RULE No. 174.—Every Clerk is expected and enjoined to answer promptly all reasonable inquiries made touching their suits by the parties thereto, their attorneys or agents; if no postage stamp is sent him for reply, then such answer may be by post card.

RULE No. 175.—On payment of a fee of 5cts. every Clerk when required by parties paying costs, shall give a statement, in writing, of items in detail, or transmit the same by postal card.

RULE No. 176.—The Bailiff receiving an execution shall immediately endorse on the same a correct statement of the day and hour of the day when he received such execution, and in addition to the formal return (Form 124) on every execution returned, he shall give a correct and full statement of the particulars, in detail, of all his charges made for fees and disbursements in the execution thereof; and a similar statement in making returns of Writs of Replevin and Warrants of Attachment.

RULE No. 177.—In case of any process or paper received for service or execution from a "Foreign Court," the Clerk so receiving the same and procuring the service or execution thereof shall, on returning the same, give a full and correct statement, in detail, of the items of all charges made for fees and disbursements in respect of such service or execution of process, and the Clerk who receives the same shall report to the Judge of his own county any charge made by the Clerk of the "Foreign Court" in excess of the allowance for fees made by the tariff.

RULE No. 178.—Rule 89 of the General Rules of the 1st of July, 1869, is amended as follows:—All the words after the word "Sum-

mons" in the said rule are struck out, and the following are substituted in lieu thereof :—"And the Bills given under Form 129 show the forms in which such Bills may be made out, and are to be taken as guides in framing and taxing such Bills."

RULE No. 179.—Form 114 in the Schedule of General Forms is hereby rescinded, and Form 129 is substituted therefor.

RULE No. 180.—When any notice required to be given to any of the parties to a suit is sent through the Post Office, the Clerk shall register the letter containing such notice, and shall obtain and preserve with the other papers in the suit, a certificate of such registration.

Dated 28th November, 1879.

JAS. ROB'T GOWAN,
Senior Judge C. S., Chairman.

S. J. JONES,
County Judge, Brant.

D. J. HUGHES.
County Judge, Elgin.

Approved.

JOHN H. HAGARTY, C.J.,
ADAM WILSON, C.J., C.P,
THOMAS GALT, J.,
M. C. CAMERON, J.Q.B.,
F. OSLER, J.C.P.

FORMS OF BILLS OF COSTS.

FORM 129.

BILL OF COSTS upon a claim for, say, $20 up to and including judgment entered by the Clerk, upon special summons, no notice of defence being given.

Clerk's Fees.

Receiving claim, numbering and entering in Procedure Book	$0 15
Issuing summons, with necessary notices and warnings thereon	0 30
Copy of summons, including all notices and warnings thereon	0 20
Receiving and entering Bailiff's return to summons	0 10
Affidavit of service and administering oath to the deponent	0 25
Notice to plaintiff, when defendant has failed to give notice of defence, 10c. ; postage and registration, 5c	0 15
Entering final judgment by the Clerk	0 40
Total Clerk's fees	$1 55

Bailiff's Fees.

Service of summons	$0 20	
Return of service, and attending Clerk's office to make necessary affidavit	0 10	
	$0 30	
Total Bailiff's fees		0
Total costs		$1 35

Taxed this day of , 18 .

Clerk.

BILL OF COSTS upon claims for, say, $60.00, defended, cause tried, and judgment entered for plaintiff, with costs.

Clerk's Fees.

Receiving claim, &c.	$0 15
Issuing summons, &c.	0 40
Copy of summons, &c.	0 20
Receiving and entering Bailiff's returns, &c.	0 10
Affidavit of service, &c.	0 25
Subpœna to witness	0 10
Three copies	0 15
Notice of defence, &c., to plaintiff, and mailing same, 10c.; postage and registration, 5c.	0 15
Recording and entering judgment rendered at the hearing	0 40
Total Clerk's fees	$1 90

Bailiff's Fees.

Service of summons, &c.	$0 30	
Attending to return, &c.	0 10	
Service of subpœna (3 witnesses).	0 30	
Calling parties and their witnesses	0 15	
	$0 85	
Total Bailiff's fees		0 85
Total costs		$2 75

Taxed, this day of , 18 .

Clerk.

N. B.—Mileage and fees to witnesses, if any, to be added.

FORM 130.

SCHEDULE OF CLERK'S FEES.

1. Receiving claim, numbering and entering in Procedure Book. (This item to apply to entering in the procedure book a transcript of judgment from another court, but not an entry made for the issue of a judgment summons.)	$0 15
2. Issuing summons, with necessary notices and warnings thereon, or judgment summons (as provided in the forms), in all, Where claim does not exceed $20	0 30

Where claim exceeds $20, and does not exceed $60 .. $0 40
" " exceeds $60 ..... 0 50

[N.B.—In replevin and interpleader suits, the value of goods to regulate the fee.]

3. Copy of summons, including all notices and warnings thereon 0 20
4. Copy of claim (including particulars), when not furnished by the plaintiff (to be paid by the plaintiff) 0 20
5. Copy of set-off (including particulars), when not furnished by the defendant (to be paid by the defendant) 0 20
6. Receiving and entering Bailiff's return to any summons, writ or warrant issued under the seal of the Court (except summons to witness and return to summons, or papers from another Division) 0 10
7. Entering notice of set-off, plea of payment, or other defence requiring notice to the plaintiff, or notic of admission 0 20

(To be paid in the first instance by the defendant or other person entering it—but it may be afterwards taxed against the plaintiff should costs be given against him.)

8. Taking confession of judgment 0 10

(This does not include affidavit and oath, chargeable under item 9.)

9. Every necessary affidavit, if actually prepared by the Clerk, and administering oath to the deponent 0 25
10. Copies of papers, for which no fee is already provided—necessarily required for service or transmission to the Judge,—each 0 10
11. Every notice required to be given by Clerk to any party to a cause or proceeding, or to the Judge in respect to the same, and mailing 0 10
12. Entering final judgment by Clerk, on special summons: where claim not disputed 0 40
13. Entering every judgment rendered at the hearing, or final order made by the Judge 0 40

[This one fee of 40c. will include the service of recording at the trial and afterwards entering in the procedure book the judgment, decree and order in its entirety, rendered or made at the trial. In a garnishee proceeding before judgment, the fee of 40c. will be allowed for the judgment in respect to the primary debtor, and a like fee of 40c. for the adjudication whenever made in respect to the garnishee.]

14. Subpœna to witness $0 10

(The Subpœna may include any number of names therein, and only one original subpœna shall be taxed, except the Judge otherwise orders.)

15. For every copy of Subpœna required for service 0 05

16.	Summons for each juryman, when called by the parties.. (Only 25cts. in all will be allowed for returning a Judge's jury.)	$0 10
17.	Every order of reference or order for adjournment made at hearing, and every order requiring the signature of the Judge, and entering the same ..... (Any warning necessary with order, *e. g.*, the warning in form 42, forms part of the order.)	0 15
18.	Transcript of judgment (under sections 161 or 165)	0 25
19.	Every writ of execution, warrant of attachment, or warrant for arrest of delinquent and delivering same to Bailiff	0 40
20.	Renewal of every writ of execution when ordered by the judgment creditor.....	0 10
21.	Every bond when necessary and prepared by the Clerk (including affidavit of justification)	0 50
22.	For necessary entries in the debt attachment book in each case (in all)	0 20
23.	Transmitting transcript of judgment; or transmitting papers for service to another division, or to Judge on application to him, including necessary entries, but not postage	0 20
24.	Receiving papers from another division for service, entering the same, handing to the Bailiff, receiving and entering his return, and transmitting the same (if return made promptly, not otherwise) ..... (This fee does not include a charge for receiving transcript of judgment for which a fee of 15 cents is taxable under item 1.)	0 30
25.	Search by person not party to the suit or proceeding to be paid by the applicant, 10c.; search by party to the suit or proceeding where service is over one year old.... (No fee is chargeable for search to a party to the suit or proceeding, if the same is not over one year old.)	0 10

FORM 131.

SCHEDULE OF BAILIFFS' FEES.

1.	Service of summons, writ or warrant, issued under the seal of the Court, or Judge's summons on each person (except summons to witness, and summons to juryman), Where claim does not exceed $20	0 20
	" " exceeds $20 and does not exceed $60.....	0 30
	" " " $60	0 40

[In interpleader suits the value of the goods to regulate the fee.]

2. For every return as to service of summons, attending at the Clerk's office and making the necessary affidavit (as provided by rule 90) $0 10
3. Service of summons on witness or juryman, or service of notice 0 10
4. Taking confession of judgment, and attending to prove. 0 10
5. For calling parties and their witnesses at the sittings of the Court in every defended case, as provided by Rule 91, amended by Rule 168 ..... 0 15
6. Enforcing every writ of execution, or summons in replevin, or warrant of attachment, or warrant against the body,—each,
   Where claim does not exceed $20 ..... 0 40
   " " exceeds $20 and does not exceed $60. .... 0 60
   " " " $60 ..... 0 80
   (Executing summons in replevin, includes service on defendant. The value of the goods to regulate the amount of the fee.)
7. Every mile necessarily travelled to serve summons or process, or other necessary papers, or in going to seize on attachment, or in going to seize on a writ of execution, where money made or case settled after levy 0 11
   (In no case is mileage to be allowed for a greater distance than from the Clerk's office to the place of service or seizure.)
8. Mileage to arrest delinquent under a warrant to be at 11 cents per mile, but for carrying delinquent to prison, including all expenses and assistance, per mile 0 20
9. Every schedule of property seized, attached or replevied, including affidavit of appraisal, when necessary,
   Not exceeding $20 ..... 0 30
   Exceeding $20 and not exceeding $60 ..... 0 50
   Exceeding $60 ..... 0 75
10. Every bond when necessary, when prepared by the Bailiff, (including affidavit of justification) 0 50
11. Every notice of sale, not exceeding three, under execution or under attachment, each 0 15
12. There shall be allowed to the Bailiff, for removing or retaining property seized under execution or attached, reasonable and necessary disbursements and allowances, to be first settled by the Clerk, subject to appeal to the Judge .....
13. There shall be allowed to the Bailiff five per cent. upon the amount realized from the sale of property under any execution, but such percentage not to apply to any overplus thereon .....

The subjoined table will shew the amount of costs (in three grades) properly chargeable under the foregoing tables of fees, in an ordinary suit for money demand against one defendant and in the several stages specified in the table.

Officers' Fees—Clerk and Bailiff.	Claim under $20.	Claim $20 to $60.	Claim over $60.
	$ cts.	$ cts.	$ cts.
Up to and including the issuing of summons and delivering the same with copy to Bailiff, where claim paid or case settled before service of summons by Bailiff	0 65	0 75	0 85
Up to hearing, but not including the hearing where case settled or claim paid before hearing [If claim settled before notice to Plaintiff of defence, &c., 15 cents to be deducted from each of these items.]	1 45	1 65	1 85
Up to and including the entry of judgment after the hearing by Judge, and case settled after hearing and judgment	2 00	2 20	2 40

N.B.—The amounts in the above table do not include fees for services only occasionally rendered (found in the table of fees) or extra postage or jury cases, or mileage, or summoning witnesses, or disbursements to witnesses, which will vary in each case.

Dated 28th November, 1879.

JAS. ROBT. GOWAN,
Senior Judge, C.S.
S. J. JONES,
County Judge, Brant.
D. J. HUGHES,
County Judge, Elgin.

Approved:
John H. Hagarty, C.J.
Adam Wilson, C.J., C.P.
Thos Galt, J.
M. C. Cameron, J.Q.B.
F. Osler, J.C.P.

INTEREST TABLE

FOR THE USE OF

DIVISION COURT OFFICERS.

In accordance with a suggestion made by a Division Court Officer of large experience, the following interest table is inserted for the use of Clerks and Bailiffs. To calculate the interest on a given sum, take from the Table the interest upon one dollar for the time required, and multiply it by the number of dollars upon which you wish to make the calculation. For example: required the interest upon $200 for 11 days at six per cent. :—

The interest on $1 for 11 days is	·00183
Multiply this by 200	200
Answer.....	·36600
Say 37 cents.	

The calculations made in the following tables are on the sum of one dollar.

6 Per Cent.	7 Per Cent.	8 Per Cent.		9 Per Cent.	10 Per Cent.	12 Per Cent.
·06	·07	·08	YEARS 1	·09	·10	·12
·12	·14	·16	2	·18	·20	·24
·18	·21	·24	3	·27	·30	·36
·24	·28	·32	4	·36	·40	·48
·30	·35	·40	5	·45	·50	·60
			MONTHS			
·005	·00583	·00666	1	·0075	·00833	·01
·01	·01166	·01333	2	·015	·01666	·02
·015	·01750	·02000	3	·0225	·02500	·03
·02	·02333	·02666	4	·03	·03333	·04
·025	·02916	·03333	5	·0375	·04166	·05
·03	·03500	·04000	6	·045	·05000	·06
·035	·04083	·04666	7	·0525	·05833	·07
·04	·04666	·05333	8	·06	·06666	·08
·045	·05250	·06000	9	·0675	·07500	·09
·05	·05833	·06666	10	·075	·08333	·10
·055	·06416	·07333	11	·0825	·09166	·11
			DAYS			
·00016	·00019	·00022	1	·00025	·00027	·00033
·00033	·00038	·00044	2	·00050	·00055	·00066
·00050	·00058	·00066	3	·00075	·00083	·00100
·00066	·00077	·00088	4	·00100	·00111	·00133
·00083	·00097	·00111	5	·00125	·00138	·00166
·00100	·00116	·00133	6	·00150	·00166	·00200
·00116	·00136	·00155	7	·00175	·00194	·00233
·00133	·00155	·00177	8	·00200	·00222	·00266
·00150	·00175	·00200	9	·00225	·00250	·00300
·00166	·00194	·00222	10	·00250	·00277	·00333
·00183	·00213	·00244	11	·00275	·00305	·00366
·00200	·00233	·00266	12	·00300	·00333	·00400
·00216	·00252	·00288	13	·00325	·00361	·00433
·00233	·00272	·00311	14	·00350	·00388	·00466
·00250	·00291	·00333	15	·00375	·00416	·00500
·00266	·00311	·00355	16	·00400	·00444	·00533
·00283	·00330	·00377	17	·00425	·00472	·00566
·00300	·00350	·00400	18	·00450	·00500	·00600
·00316	·00369	·00422	19	·00475	·00527	·00633
·00333	·00388	·00444	20	·00500	·00555	·00666
·00350	·00408	·00466	21	·00525	·00583	·00700
·00366	·00427	·00488	22	·00550	·00611	·00733
·00383	·00447	·00511	23	·00575	·00638	·00766
·00400	·00466	·00533	24	·00600	·00666	·00800
·00416	·00486	·00555	25	·00625	·00694	·00833
·00433	·00505	·00577	26	·00650	·00722	·00866
·00450	·00525	·00600	27	·00675	·00750	·00900
·00466	·00544	·00622	28	·00700	·00777	·00933
·00483	·00563	·00644	29	·00725	·00805	·00966
·00500	·00583	·00666	30	·00750	·00833	·01000
·00516	·00602	·00688	31	·0075	·00861	·01033
·00533	·00622	·00711	32	·00800	·00888	·01066
·00550	·00641	·00733	33	·00825	·00916	·01100
·00566	·00661	·00755	34	·00850	·00944	·01133
·00583	·00680	·00777	35	·00875	·00972	·01166
·00600	·00700	·00800	36	·00900	·01000	·01200
·00616	·00719	·00822	37	·00925	·01027	·01233
·00633	·00738	·00844	38	·00950	·01055	·01266
·00650	·00758	·00866	39	·00975	·01083	·01300
·00666	·00777	·00888	40	·01000	·01111	·01333
·00683	·00797	·00911	41	·01025	·01138	·01366

6 Per Cent.	7 Per Cent.	8 Per Cent.	DAYS	9 Per Cent.	10 Per Cent.	12 Per Cent.
·00700	·00816	·00933	42	·01050	·01166	·01400
·00716	·00836	·00955	43	·01075	·01194	·01433
·00733	·00855	·00977	44	·01100	·01222	·01466
·00750	·00875	·01000	45	·01125	·01250	·01500
·00766	·00894	·01022	46	·01150	·01277	·01533
·00783	·00913	·01044	47	.01175	·01305	·01566
·00800	·00933	·01066	48	·01200	·01333	·01600
·00816	·00952	·01088	49	·01225	·01361	·01633
·00833	·00972	·01111	50	·01250	·01388	·01666
·00850	·00991	·01133	51	·01275	·01416	·01700
·00866	·01011	·01155	52	.01300	·01444	·01733
·00883	·01030	·01177	53	·01325	·01472	·01766
·00900	·01050	·01200	54	·01350	·01500	·01800
·00916	·01069	·01222	55	·01375	·01527	·01833
·00933	·01088	·01244	56	·01400	·01555	·01866
·00950	·01108	·01266	57	·01425	·01583	·01900
·00966	·01127	·01288	58	·01450	·01611	·01933
·00983	·01147	·01311	59	·01475	·01638	·01966
·01000	·01166	·01333	60	·01500	·01666	·02000
·01016	·01186	·01355	61	·01525	·01694	·02033
·01033	·01205	·01377	62	·01550	·01722	·02066
·01050	·01225	·01400	63	·01575	·01750	·02100
·01066	·01244	·01422	64	·01600	·01777	·02133
·01083	·01263	·01444	65	·01625	·01805	·02166
·01100	·01283	·01466	66	·01650	·01833	·02200
·01116	·01302	·01488	67	·01675	·01861	·02233
·01133	·01322	·01511	68	·01700	·01888	·02266
·01150	·01341	·01533	69	·01725	·01916	·02300
·01166	·01361	·01555	70	·01750	·01944	·02333
·01183	·01380	·01577	71	·01775	·01972	·02366
·01200	·01400	·01600	72	·01800	·02000	·02400
·01216	·01419	·01622	73	·01825	·02027	·02433
·01233	·01438	·01644	74	·01850	·02055	·02466
·01250	·01458	·01666	75	·01875	·02083	·02500
·01266	·01477	·01688	76	·01900	·02111	·02533
·01283	·01497	·01711	77	·01925	·02138	·02566
·01300	·01516	·01733	78	·01950	·02166	·02600
·01316	·01536	·01755	79	·01975	·02194	·02633
·01333	·01555	·01777	80	·02000	·02222	·02666
·01350	·01575	·01800	81	·02025	·02250	·02700
·01366	·01594	·01822	82	·02050	·02277	·02733
·01383	·01613	·01844	83	·02075	·02305	·02766
·01400	·01633	·01866	84	·02100	·02333	·02800
·01416	·01652	·01888	85	·02125	·02361	·02833
·01433	·01672	·01911	86	·02150	·02388	·02866
·01450	·01691	·01933	87	·02175	·02416	·02900
·01466	·01711	·01955	88	·02200	·02444	·02933
·01483	·01730	·01977	89	·02225	·02472	·02966
·01500	·01750	·02000	90	·02250	·02500	·03000
·01516	·01769	·02022	91	·02275	·02527	·03033
·01533	·01788	·02044	92	·02300	·02555	·03066
·01550	·01808	·02066	93	·02325	·02583	·03100
·01566	·01827	·02088	94	·02350	·02611	·03133
·01583	·01847	·02111	95	·02375	·02638	·03166
·01600	·01866	·02133	96	·02400	·02666	·03200
·01616	·01886	·02155	97	·02425	·02694	·03233
·01633	·01905	·02177	98	·02450	·02722	·03266
·01650	·01925	·02200	99	·02475	·02750	·03300
·01666	·01944	·02222	100	·02500	·02777	·03333

Officers of the Division Courts.

CORRECTED TO DATE.*

ALGOMA DISTRICT.

1st	E. Biggings	Sault Ste Marie	*Clerk.*
	John Dawson	"	*Bailiff.*
2nd	John McEwan	Bruce Mines	*Clerk.*
	Thomas Collins	"	*Bailiff.*
3rd	S. McLean	Little Current	*Clerk.*
	D. McKenzie	"	*Bailiff.*
4th	W. S. Francis	Manitowaning	*Clerk.*
	J. Gorley	"	*Bailiff.*
5th	Jas. Fraser	Gore Bay	*Clerk.*
	E. H. Jackson	"	*Bailiff.*

BRANT.

1st	Jos. Robinson	Brantford	*Clerk.*
	Jos. Jackson	"	*Bailiff.*
2nd	W. Goulnlock	Paris	*Clerk.*
	A. Huson	"	*Bailiff.*
3rd	J. P. Galloway	St. George	*Clerk.*
	M. B. Laurason	"	*Bailiff.*
4th	Hy. Cox	Burford	*Clerk.*
	Jos. Jackson	Brantford	*Bailiff.*
5th	John R. Malcolm	Scotland	*Clerk.*
	Chas. Wheeland	"	*Bailiff.*
6th	Jno. Henderson	Onondaga	*Clerk.*
	M. Day	"	*Bailiff.*

BRUCE.

1st	William Collins	Walkerton	*Clerk.*
	W. H. Healy & E. H. Healy	"	*Bailiffs.*
2nd	H. B. O'Connor	Teeswater	*Clerk.*
	Wm. Mellis	"	*Bailiff.*
	P. Corringan	Holyrood	"
3rd	Jos. Barker	Kincardine	*Clerk.*
	F. A. Loscombe	"	*Bailiff.*
4th	Frank Grange	Paisley	*Clerk.*
	W. W. Hogg	"	*Bailiff.*
5th	Cyrus Carroll	Port Elgin	*Clerk.*
	M. Hunter	"	*Bailiff.*

* The limits of the different Courts will be found at page 429 of the Manual of 1879. They are not now re-published, as they have not been materially altered.

6th	Hugh Murray	Underwood	*Clerk.*
	Geo. Deighton	Twirton	*Bailiff.*
7th	Geo. Stirke	Invermay	*Clerk.*
	A. Neelands	"	*Bailiff.*
	John D. White	"	"
8th	B. B. Millar	Wiarton	*Clerk.*
	H. Trout	"	*Bailiff.*
9th	H. A. Wilson	Ripley	*Clerk.*
	A. McDonald	"	*Bailiff.*

CARLETON.

1st	J. R. Armstrong	Ottawa	*Clerk.*
	R. Hamilton	"	*Bailiff.*
2nd	H. Riely	Richmond	*Clerk.*
	A. Wright	"	*Bailiff.*
3rd	John Fenton	Huntley	*Clerk.*
	A. Johnston	"	*Bailiff.*
4th	W. P. Taylor	Fitzroy Harbor	*Clerk.*
	R. T. Smith	"	*Bailiff.*
5th	Jas. Bateman	N. Gower	*Clerk.*
	Jas. Wallace	"	*Bailiff.*
6th	Ira Morgan	Metcalf Osgoode	*Clerk.*
	W. M. Sutherland	"	*Bailiff.*
7th	F. W. Harmer	Hintonburg	*Clerk.*
	H. Wilson	Bell's Corners	*Bailiff.*

ELGIN.

1st	Alex. Love	Aylmer	*Clerk.*
	W. W. White	"	*Bailiff.*
2nd	Chas. Askew	St. Thomas	*Clerk.*
	Hy. Thornton	"	*Bailiff.*
3rd	C. Askew	"	*Clerk.*
	Hy. Thornton	"	*Bailiff.*
4th	F. McDiarmid	Bismarck	*Clerk.*
	Philip Schmelz	West Lorne	*Bailiff.*

ESSEX.

1st	A. C. Verner	Sandwich	*Clerk.*
	T. A. McKee	"	*Bailiff.*
2nd	J. H. C. Leggatt	Amherstburg	*Clerk.*
	W. J. Sparks & W. Keely	"	*Bailiffs.*
3rd	E. Allworth	Kingsville	*Clerk.*
	Geo. Mallott	"	*Bailiff.*
4th	Chas. Bell	Colchester	*Clerk.*
	P. Manning	Oxley	*Bailiff.*
5th	J. Wigfield	Leamington	*Clerk.*
	J. McGaw	"	*Bailiff.*
6th	Chas. Barillier	Rochester	*Clerk.*
	A. Bisson	Belle River	*Bailiff.*
7th	John McCrae	Windsor	*Clerk.*
	John Cornish	"	*Bailiff.*
	John Asken	"	"
8th	John Milne	Gosfield	*Clerk.*
	Geo. Matthews	Essex Centre	*Bailiff.*

FRONTENAC.

1st	John Duff	Kingston	*Clerk.*
	M. Furlong	Wolfe Island	*Bailiff.*
	J. A. Gardner	"	"
2nd	P. McKim	Cataraqui	*Clerk.*
	John A. Gardiner	Kingston	*Bailiff.*
3rd	C. Ruttan	Loborough	*Clerk.*
	J. W. Freeman	"	*Bailiff*
4th	A. Grant	Verona	*Clerk.*
	Henry Sly	"	*Bailiff.*
	S. W. Davey	"	"
	M. W. Price	Arden	"
5th	D. J. Walker	Inverary	*Clerk.*
	W. Walker	"	*Bailiff.*

GREY.

1st	John Stephens	Owen Sound	*Clerk.*
	Robert Edgar	"	*Bailiff.*
2nd	David Jackson	Durham	*Clerk.*
	Thos. Meredith	"	*Bailiff.*
3rd	Thos. Plunkett	Meaford	*Clerk.*
	A. Watt	"	*Bailiff.*
4th	T. J. Rorke	Heathcote	*Clerk.*
	A. Mitchell	Clarksburg	*Bailiff.*
5th	J. W. Armstrong	Flesherton	*Clerk.*
	A. S. Vandusen	"	*Bailiff.*
6th	John McDonald	Chatsworth	*Clerk.*
	Wm. B. Simpson	"	*Bailiff.*

HALDIMAND.

1st	Wm. Jackson	Caledonia	*Clerk.*
	H. J. Ince	Willow Grove	*Bailiff.*
2nd	Wm. Mussen	Cayuga	*Clerk.*
	Andrew Finlen	"	*Bailiff.*
3rd	Thos. Armour	Dunnville	*Clerk.*
	J. Clemmo	"	*Bailiff.*
4th	J. Honsberger	Rainham	*Clerk.*
	Jacob Fite	"	*Bailiff.*
5th	S. K. Smith	Canboro	*Clerk.*
	E. W. Robins	"	*Bailiff.*
6th	C. E. Bourne	Jarvis	*Clerk.*
	M. Atkinson	Cheapside	*Bailiff.*

HALIBURTON.

1st	C. D. Curry	Minden	*Clerk.*
	R. C. Garratt	"	*Bailiff.*
2nd	C. A. Wastell	Haliburton	*Clerk.*
	W. Crossthwaite	"	*Bailiff.*

HALTON.

1st	Wm. Panton	Milton	*Clerk.*
	Jas. H. Fraser	"	*Bailiff.*

2nd	R. Balmer	Oakville	*Clerk.*
	S. Bell	"	*Bailiff.*
3rd	J. Holgate	Georgetown	*Clerk.*
	John Hayes	"	*Bailiff.*
4th	Jas. Matthews	Acton	*Clerk.*
	Wm. Hemstreet	"	*Bailiff.*
5th	S. R. Lister	Nassagaweya	*Clerk.*
	E. Chapman	"	*Bailiff.*
6th	W. S. Bastedo	Burlington	*Clerk.*
	J. W. Henderson	"	*Bailiff.*

HASTINGS.

1st	R. C. Hulme	Belleville	*Clerk.*
	John Bull & W. H. Stinson	"	*Bailiffs.*
2nd	D. R. Ketcheson	Wallbridge	*Clerk.*
	J. E. Bleecker	Frankford	*Bailiff.*
3rd	H. Holden	Shannonville	*Clerk.*
	W. R. Lazier	"	*Bailiff.*
4th	Jas. Reid	Tweed	*Clerk.*
	W. J. Bowell	"	*Bailiff.*
5th	Geo. E. Bull	Stirling	*Clerk.*
	C. Butler	"	*Bailiff.*
6th	G. D. Rawe	Madoc	*Clerk.*
	Henry Bull	"	*Bailiff.*
7th	Thos. Emo	Ivanhoe	*Clerk.*
	John B. Fox	"	*Bailiff.*
8th	Jacob Sills	Canifton	*Clerk.*
	W. H. Stinson	Belleville	*Bailiff.*
9th	J. Simmons	Trenton	*Clerk.*
	Thos. Warren	"	*Bailiff.*
10th	D. Bentley	Marmora	*Clerk.*
	L. Cruickshank	"	*Bailiff.*
11th	E. James	Bridgewater	*Clerk.*
	Washburn Ashley	"	*Bailiff.*
12th	J. Wilson	L'Amable	*Clerk.*
	Geo. McLean	"	*Bailiff.*

HURON.

1st	J. S. McDougall	Goderich	*Clerk.*
	J. C. Currie	"	*Bailiff.*
2nd	L. Meyer	Seaforth	*Clerk.*
	J. Brine	"	*Bailiff.*
3rd	W. W. Farran	Clinton	*Clerk.*
	D. Dickenson	"	*Bailiff.*
4th	A. Hunter	Brussels	*Clerk.*
	F. S. Scott	"	*Bailiff.*
5th	R. Trivett	Exeter	*Clerk.*
	J. D. Ellis	"	*Bailiff.*
6th	Jno. Cooke	Dungannon	*Clerk.*
	Robert Hagen	"	*Bailiff.*
7th	W. W. Connor	Bayfield	*Clerk.*
	J. Ferguson	"	*Bailiff.*
8th	D. Watson	Wingham	*Clerk.*
	W. McConnell	"	*Bailiff.*

9th	A. Gibson	Wroxeter	*Clerk.*
	Jos. Cowan	"	*Bailiff.*
10th	M. Zeller	Zurich	*Clerk.*
	E. Bossenbury	"	*Bailiff.*
11th	A. A. Hobkirk	Crediton	*Clerk.*
	J. D. Ellis	Exeter	*Bailiff.*

KENT.

1st	W. B. Wells	Chatham	*Clerk.*
	T. H. Nelson	"	*Bailiff.*
	Chas. J. Moore	"	"
2nd	J. Duck	Morpeth	*Clerk.*
	Wm. Teetzel	"	*Bailiff.*
3rd	S. Wallace	Dresden	*Clerk.*
	Chas. Stephens	"	*Bailiff.*
4th	Geo. Young	Harwich	*Clerk.*
	J. A. Little & W. R. Fellowes	"	*Bailiffs.*
5th	John Lillie	Wallaceburg	*Clerk.*
	L. A. McDougal	"	*Bailiff.*
	John Broderick	"	"
6th	J. Taylor	Bothwell	*Clerk.*
	S. J. Thomas	"	*Bailiff.*
	H. F. Smith	"	"
7th	D. R. Farquharson	Tilbury East	*Clerk.*
	M. Dillon	Merlin	*Bailiff.*

LAMBTON.

1st	H. M. Pousette	Sarnia	*Clerk.*
	R. Miller	"	*Bailiff.*
2nd	A. D. Elliott	Watford	*Clerk.*
	J. T. Elliott	"	*Bailiff.*
3rd	W. Webster	Florence	*Clerk.*
	Thos. Mead	"	*Bailiff.*
4th	P. Cattanach	Sombra	*Clerk.*
	W. Cornwall	"	*Bailiff.*
5th	T. R. K. Scott	Ogema	*Clerk.*
	John Edmiston	"	*Bailiff.*
6th	T. Kirkpatrick	Thedford	*Clerk.*
	J. S. White & Jno. Allen	"	*Bailiffs.*
7th	Robert Dale	Mooretown	*Clerk.*
	R. Richmond	"	*Bailiff.*
8th	W. G. Fraser	Petrolia	*Clerk.*
	John Sinclair	"	*Bailiff.*
9th	J. N. Brennan	Alvinston	*Clerk.*
	T. Cahill	"	*Bailiff.*

LANARK.

1st	R. Jamieson	Perth	*Clerk.*
	Jas. Patterson	"	*Bailiff.*
	D. McKerracher	"	"
2nd	W. A. Field	Lanark	*Clerk.*
	Peter Kerr	"	*Bailiff.*
3rd	James Poole	Carleton Place	*Clerk.*
	George McPherson	"	*Bailiff.*
	J. McPherson	Almonte	"

4th	W. M. Keith	Smith's Falls	Clerk.
	H. D. Chalmers	"	Bailiff.
5th	John Cowan	Packenham	Clerk.
	Wm. Scott	"	Bailiff.
6th	J. Patterson	Almonte	Clerk.
	J. McPherson	"	Bailiff.

LEEDS AND GRENVILLE.

1st	D. B. Jones	Brockville	Clerk.
	H'y McPhall & N. Marshall	"	Bailiffs.
2nd	B. White	Prescott	Clerk.
	J. Jenkinson	"	Bailiff.
3rd	S. McCammon	Gananoque	Clerk.
	S. F. Greenizan	"	Bailiff.
4th	R. Leslie	Kemptville	Clerk.
	J. Dickinson	"	Bailiff.
5th	E. H. Whitmarsh	Merrickville	Clerk.
	P. Dowdell	"	Bailiff.
6th	W. H. Denaut	Delta	Clerk.
	W. H. Denaut, jr.	"	Bailiff.
7th	H. McCrae	Frankville	Clerk.
	R. Richards & Uriah Stone	"	Bailiffs.
8th	H. Kilborn	Newton	Clerk.
	J. McGregor	West Port	Bailiff.
	W. G. Mitchell	Newboro'	"
9th	D. Mansell	Farmersville	Clerk.
	R. Johnson	"	Bailiff.
10th	D. H. Keeler	Spencerville	Clerk.
	Wm. Stitt, jr	"	Bailiff.
11th	B. Colborn	N. Augusta	Clerk.
	S. J. Whaley	"	Bailiff.
12th	F. A. Munro	Mallorytown	Clerk.
	F. Thomson	"	Bailiff.

LENNOX AND ADDINGTON.

1st	Charles James	Napanee	Clerk.
	Zina Ham	"	Bailiff.
2nd	C. L. Rogers	Bath	Clerk.
	R. R. Finkle	"	Bailiff.
3rd	J. J. Watson	Adolphustown	Clerk.
	D. Davern	"	Bailiff.
4th	P. Johnstone	Camden East	Clerk.
	Zina Ham	Napanee	Bailiff.
5th	Wm. Whelan	Centreville	Clerk.
	P. Vanderwater	"	Bailiff.
6th	H. Pultz	Wilton	Clerk.
	John Simmons	"	Bailiff.
7th	T. Miller	Tamworth	Clerk.
	P. T. Carscallen	"	Bailiff.
	T. F. Dunham	Kaladar	"

LINCOLN.

1st	W. S. Winterbottom	Niagara	Clerk.
	P. Hennigan	"	Bailiff.

2nd	Thos. Pearson	Smithville	*Clerk.*
	Alvin D. Lacey	"	*Bailiff.*
3rd	W. A. Mittleberger	St. Catharines	*Clerk.*
	Wm. Brownlee	"	*Bailiff.*
4th	J. C. Kerr	Beamsville	*Clerk.*
	F. B. Rogers	"	*Bailiff.*

MIDDLESEX.

1st	J. C. Meredith	London	*Clerk.*
	J. Harris	"	*Bailiff.*
2nd	G. G. Hamilton	Ailsa Craig	*Clerk.*
	Thos. Priestly	"	*Bailiff.*
3rd	J. Flanagan	McGillivray	*Clerk.*
	G. W. Hodgins	"	*Bailiff.*
4th	C. J. Fox	Delaware	*Clerk.*
	J. Fitzallen	"	*Bailiff.*
5th	Geo. Wilson	Glencoe	*Clerk.*
	P. Deming	Newbury	*Bailiff.*
6th	Jno. English	Strathroy	*Clerk.*
	F. Wilson	"	*Bailiff.*
7th	Thomas Smith	Nilestown	*Clerk.*
	A. Smith	"	*Bailiff.*
8th	James Grant	Avon	*Clerk.*
	A. Cummings	"	*Bailiff.*
9th	Henry Imlack	London East	*Clerk.*
	Jno. Beverly	Dorchester Station	*Bailiff.*

MUSKOKA.

1st	T. M. Bowerman	Bracebridge	*Clerk.*
	R. H. White	"	*Bailiff.*
2nd	J. H. Jackson	Severn Bridge	*Clerk.*
	Joseph Nelson	Gravenhurst	*Bailiff.*
3rd	B. Phillips	Huntsville	*Clerk.*
	William Hanes	"	*Bailiff.*
4th	R. G. Penson	Port Carling	*Clerk.*
	Robert Giles	"	*Bailiff.*

NIPISSING.

1st	John McMeekin	Mattawa	*Clerk.*
	Xavier Ranger	"	*Bailiff.*

NORFOLK.

1st	W. R. Griffin	Simcoe	*Clerk.*
	Nathan Pegg	"	*Bailiff.*
2nd	Ed. Matthews	Waterford	*Clerk.*
	Ed. Grace	"	*Bailiff.*
3rd	R. Greene	Windham Centre	*Clerk.*
	D. C. Wood	Simcoe	*Bailiff.*
4th	C. S. Harris	Courtland	*Clerk.*
	R. Power	Delhi	*Bailiff.*
5th	W. Hewitt	Vittoria	*Clerk.*
	W. C. Doyle	"	*Bailiff.*

6th	S. P. Mabee	Port Rowan	*Clerk.*
	John Tolmie	"	*Bailiff.*
7th	T. C. Chamberlain	Houghton	*Clerk.*
	Thomas Pierce	Clear Creek	*Bailiff.*
8th	Lawrence Skey	Port Dover	*Clerk.*
	Hiram Fairchild	"	*Bailiff.*

NORTHUMBERLAND AND DURHAM.

1st	F. Cubitt	Bowmanville	*Clerk.*
	Charles Coleman	"	*Bailiff.*
	Peter Coleman	"	"
2nd	S. Wilmot	Newcastle	*Clerk.*
	James Coleman	"	*Bailiff.*
3rd	G. M. Furby	Port Hope	*Clerk.*
	J. T. Henwood	"	*Bailiff.*
4th	John Hunter	Millbrook	*Clerk.*
	Henry Atkins	"	*Bailiff.*
5th	A. G. Boswell	Cobourg	*Clerk.*
	Orrin Dean	"	*Bailiff.*
6th	T. Bingley	Grafton	*Clerk.*
	Thomas Patterson	"	*Bailiff.*
7th	W. Johnston	Colborne	*Clerk.*
8th	G .S. Burrell	Brighton	*Clerk.*
	P. M. Dulmage	"	*Bailiff.*
9th	R. R. Hurlburt	Warkworth	*Clerk.*
	G. H. Boyce	"	*Bailiff.*
10th	C. W. Smith	Wooler	*Clerk.*
	T. P. Garrat	"	*Bailiff.*
11th	D. Kennedy	Campbellford	*Clerk.*
	Robert Cock	"	*Bailiff.*

ONTARIO.

1st	D. C. Macdonell	Whitby	*Clerk.*
	J. W. Palmer	"	*Bailiff.*
2nd	M. Gleeson	Greenwood	*Clerk.*
	C. W. Matthews	Brougham	*Bailiff.*
3rd	J. Burnham	Port Perry	*Clerk.*
	James Paxton	"	*Bailiff.*
4th	Z. Hemphill	Uxbridge	*Clerk.*
	J. E. Widdifield	"	*Bailiff.*
5th	C. Burnham	Cannington	*Clerk.*
	S. Baird	"	*Bailiff.*
6th	George F. Bruce	Beaverton	*Clerk.*
	Donald Ross	"	*Bailiff.*
7th	H. E. O'Dell	Atherly	*Clerk.*
	C. E. Hewitt	"	*Bailiff.*

OXFORD.

1st	F. W. Macqueen	Woodstock	*Clerk.*
	W. H. McKay	"	*Bailiff.*
2nd	C. D. Rounds	Drumbo	*Clerk.*
	C. W. Cowan	"	*Bailiff.*
3rd	D. Matheson	Embro	*Clerk.*
	Thos. Cowan	Ingersoll	*Bailiff.*

4th	James Barr	Norwichville	*Clerk.*
	Wm. Stroud	"	*Bailiff.*
5th	D. Canfield	Ingersoll	*Clerk.*
	Thos. Cowan	"	*Bailiff.*
6th	J. Hodgson	Tilsonburg	*Clerk.*
	M. Dillon	"	*Bailiff.*

PARRY SOUND.

1st	R. H. Stewart	Parry Sound	*Clerk.*
	T. W. George	"	*Bailiff.*
2nd	Henry Armstrong	McKellar P. O	*Clerk.*
	W. J. Moffat	"	*Bailiff.*
3rd	E. Sweet	Ashdown	*Clerk.*
	John Horton	"	*Bailiff.*
4th	J. McKenzie	Beggsboro	*Clerk.*
	John Boys	"	*Bailiff.*
5th	S. G. Best	Magnetawan	*Clerk.*
	D. J. Brodie	"	*Bailiff.*

PEEL.

1st	T. A. Agar	Brampton	*Clerk.*
	Wm. Broddy	"	*Bailiff.*
2nd	A. Simpson	Streetsville	*Clerk.*
	G. E. Hawkins	"	*Bailiff.*
3rd	Jno. Harris	Caledon	*Clerk.*
	Jas. McQuarrie	"	*Bailiff.*
4th	L. R. Bolton	Albion	*Clerk.*
	J. C. Switzer	"	*Bailiff.*

PERTH.

1st	D. B. Burritt	Stratford	*Clerk.*
	T. Tobin	"	*Bailiff.*
2nd	Thos. Matheson	Mitchell	*Clerk.*
	J. S. Coppin	"	*Bailiff.*
3rd	E. Long	St. Marys	*Clerk.*
	Wm. Box	"	*Bailiff.*
4th	George Brown	Shakespeare	*Clerk.*
	Chas. Lehman	"	*Bailiff.*
5th	Thos. Trow	Milverton	*Clerk.*
	H. Tauber	"	*Bailiff.*
6th	D. D. Hay	Listowell	*Clerk.*
	R. Hay	"	*Bailiff.*
	J. B. Loree	"	"

PETERBORO'.

1st	R. W. Errett	Peterboro.'	*Clerk.*
	Chas. Stapleton	"	*Bailiff.*
2nd	J. H. Butterfield	Norwood	*Clerk.*
	A. R. Anderson	"	*Bailiff.*
3rd	T. Campbell	Keene	*Clerk.*
	A. W. McIntyre	"	*Bailiff.*
4th	S. Sherin	Lakefield	*Clerk.*
	Chas. Payton	"	*Bailiff.*
5th	C. R. D. Booth	Apsley	*Clerk.*
	A. Brown	Burleigh	*Bailiff.*

PRESCOTT AND RUSSELL.

1st	E. A. Johnston	L'Orignal	*Clerk.*
	J. Fraser	"	*Bailiff.*
2nd	John Shields	Vanleek Hill	*Clerk.*
	Thomas Shields	"	*Bailiff.*
3rd	Wm. Allison	E. Hawkesbury	*Clerk.*
	P. Kelly	St. Eugene	*Bailiff.*
4th	J. Van Bridger	Plantagenet	*Clerk.*
	J. L. McKay	"	*Bailiff.*
5th	J. S. Cameron	Cumberland	*Clerk.*
	Chas. O'Macallum	"	*Bailiff.*
6th	A. Carson	Russell	*Clerk.*
	J. J. Carruthers	"	*Bailiff.*
7th	T. Higginson	Hawkesbury	*Clerk.*
	S. L. Freeman	"	*Bailiff.*
8th	J. Downing	Fournier	*Clerk.*
	C. Gates	"	*Bailiff.*

PRINCE EDWARD.

1st	Wm. Young	Picton	*Clerk.*
	A. M. Buchanan	"	*Bailiff.*
2nd	Henry Haight	Milford	*Clerk.*
	Marshall Palen	"	*Bailiff.*
3rd	J. Hamilton	Demorestville	*Clerk.*
	Edward Nixon	"	*Bailiff.*
4th	E. Roblin	Ameliasburgh	*Clerk.*
	J. S. Tice	"	*Bailiff.*
5th	J. B. Garratt	Wellington	*Clerk.*
	Thos. Jackson	"	*Bailiff.*
6th	H. B. Saylor	Bloomfield	*Clerk.*
	John Tompsett	"	*Bailiff.*
7th	J. M. Cadman	Consecon	*Clerk.*
	Daniel H. Weeks	"	*Bailiff.*
8th	E. Harrison	Waupoos	*Clerk.*
	James Rose	"	*Bailiff.*

RENFREW.

1st	A. Irving	Pembroke	*Clerk.*
	George Mitchell	"	*Bailiff.*
	Henry Guppy	"	*Bailiff.*
2nd	Thos. Thwaites	Beachburg	*Clerk.*
	John Beaupre	"	*Bailiff.*
	A. Acheson	Westmeath	*Bailiff.*
3rd	George Eady, Jr	Renfrew	*Clerk.*
	S. O. Gorman	"	*Bailiff.*
4th	Geo. E. Neilson	Arnprior	*Clerk.*
	Wm. Wilson and Jno. Lyon	"	*Bailiffs.*
5th	James Spenceley	Dacre	*Clerk.*
	John Hughes	"	*Bailiff.*
6th	James Reeves	Eganville	*Clerk.*
	M. J. Kearney	"	*Bailiff.*
7th	R. Allen	Cobden	*Clerk.*
	George Marshall	"	*Bailiff.*
	John V. Evans	"	"
8th	John C. Gurney	Rockingham	*Clerk.*
	Levi Lord	"	*Bailiff.*

SIMCOE.

1st	A. J. Lloyd	Barrie	*Clerk.*
	Alex. Morrow	"	*Bailiff.*
	John Weaymouth	"	"
2nd	H. W. Manning	Bradford	*Clerk.*
	Wm. Young	"	*Bailiff.*
3rd	W. H. Dickson	Beeton	*Clerk.*
	S. H. Washburn	"	*Bailiff.*
4th	A. Dudgeon	Collingwood	*Clerk.*
	John McFadzen	"	*Bailiff.*
	J. A. Mathieson	"	"
5th	A. Craig	Craighurst	*Clerk.*
	Joseph Swan	"	*Bailiff.*
6th	Donald J. Beaton	Orillia	*Clerk.*
	J. G. Wilson	"	*Bailiff.*
	Thos. W. Moffatt	"	"
7th	John A. Love	Stanton	*Clerk.*
	A. J. S. Colquhoun	"	*Bailiff.*
8th	G. McManus	Mono Mills	*Clerk.*
	S. H. Washburn	Beeton	*Bailiff.*
9th	John Lummis	Penetanguishene	*Clerk.*
	A. Sneath	Penetanguishene	*Bailiff.*
10th	J. C. Steele	Steele	*Clerk.*
	George B. Ormsby	Rugby	*Bailiff.*
11th	J. H. Mather	New Lowell	*Clerk.*
	H. Neelands	"	*Bailiff.*
12th	Thos. Gordon	Alliston	*Clerk.*
	F. M. Woolcock	"	*Bailiff.*

STORMONT, DUNDAS, AND GLENGARRY.

1st	G. H. McGillivray	Williamstown	*Clerk.*
	J. H. Robertson	Martintown	*Bailiff.*
2nd	C. D. Chisholm	Alexandria	*Clerk.*
	Robt. Macdonell	"	*Bailiff.*
	S. R. McLeod	"	"
3rd	Jas. F. Pringle	Cornwall	*Clerk.*
	D. Macdonell	"	*Bailiff.*
4th	A. Archibald	Dickenson's Landing	*Clerk.*
	H. Bush	Lunenburg	*Bailiff.*
	L. Warner	Osnabruck Centre	"
5th	J. W. Loucks	Morrisburg	*Clerk.*
	J. P. Kinney	"	*Bailiff.*
6th	J. S. Ross	Iroquois	*Clerk.*
	J. G. Brouse	"	*Bailiff.*
7th	W. J. Ridley	South Mountain	*Clerk.*
	A. Redmond	"	*Bailiff.*
8th	John A. Cockburn	Crysler	*Clerk.*
	L. Warner	Osnabruck Centre	*Bailiff.*
9th	Peter Stuart	Lancaster	*Clerk.*
	Jas. Stuart	"	*Bailiff.*
10th	Wm. Rae	Chesterville	*Clerk.*
	H. Stallmeyer	"	*Bailiff.*
11th	D. McIntosh	Monckland	*Clerk.*
	Peter McIntosh	"	*Bailiff.*
12th	J. R. Mackenzie	Skye	*Clerk.*
	S. R. McLeod	Alexandria	*Bailiff.*
	R. Macdonell	"	"

THUNDER BAY.

1st	W. H. Laird	Prince Arthur's Landing	*Clerk.*
	John Bourke	"	*Bailiff.*
2nd	John Aikins	English River, P. O.	*Clerk.*
	Joseph McKinnon	"	*Bailiff*

VICTORIA.

1st	G. W. Miller	Woodville	*Clerk.*
	D. K. Campbell	"	*Bailiff.*
2nd	G. Cunningham	Fenelon Falls	*Clerk.*
	John Kerr	"	*Bailiff.*
3rd	Irving Junkinn	Bobcaygeon	*Clerk.*
	Thos. Cheatham	"	*Bailiff.*
4th	W. Higginbotham	Omemee	*Clerk.*
	G. A. Balfour	"	*Bailiff.*
5th	Jas. McKibbon	Lindsay	*Clerk.*
	George McHugh	"	*Bailiff.*
6th	J. F. Cunnings	Oakwood	*Clerk.*
	E. A. Bowes	"	*Bailiff.*
7th	G. W. Miller	Victoria Road	*Clerk.*
	John R. Graham	"	*Bailiff.*

WATERLOO.

1st	A. J. Peterson	Berlin	*Clerk.*
	J. Klippert	"	*Bailiff.*
2nd	Otto Klotz	Preston	*Clerk.*
	John Kirkpatrick	Galt	*Bailiff.*
3rd	P. Keefer	"	*Clerk.*
	Thos. Field	"	*Bailiff.*
	Jno. Kirkpatrick	"	"
4th	Wm. D. Watson	Ayr	*Clerk.*
	E. Bouchier	Washington	*Bailiff.*
5th	J. Allchin	New Hamburg	*Clerk.*
	W. R. Plum	"	*Bailiff.*
6th	R. Morrison	Hawkesville	*Clerk.*
	R. Thompson	"	*Bailiff.*
7th	J. L. Wideman	St. Jacobs	*Clerk.*
	R. Thompson	Hawkesville	*Bailiff.*

WELLAND.

1st	G. L. Hobson	Welland	*Clerk.*
	R. C. Macdonald	"	*Bailiff.*
	Benjamin Bearss	"	"
2nd	Edward Lee	Marshville	*Clerk.*
	Ed. Henderson	"	*Bailiff.*
3rd	T. Newbigging	Fort Erie	*Clerk.*
	Geo. Graham	"	*Bailiff.*
4th	J. A. Orchard	Drummondville	*Clerk.*
	J. D. Fralick	"	*Bailiff.*
5th	Geo. Keefer	Thorold	*Clerk.*
	John Heenan	"	*Bailiff.*
6th	A. K. Scholfield	Port Colborne	*Clerk.*
	Adolphus Bower	"	*Bailiff.*

WELLINGTON.

1st	A. A. Baker	Guelph	*Clerk.*
	P. Spragge	"	*Bailiff.*
2nd	William Leslie	Puslinch	*Clerk.*
	Thomas Ingram	Aberfoyle	*Bailiff.*
3rd	H. McCarthy	Rockwood	*Clerk.*
	Wm. Hemstreet	"	*Bailiff.*
4th	T. A. W. Gordon	Fergus	*Clerk.*
	Arthur Perry	"	*Bailiff.*
5th	Wm. Tyler	Erin	*Clerk.*
	James Broddy	"	*Bailiff.*
6th	John McLean	Elora	*Clerk.*
	David Findley	Salem	*Bailiff.*
	Wm. Findley	"	"
7th	George Allan	Glen Allan	*Clerk.*
	George Mellis	"	*Bailiff.*
8th	C. E. A. Turner	Arthur	*Clerk.*
	W. F. Johnston	"	*Bailiff.*
9th	Guy Leslie	Orangeville	*Clerk.*
	Wm. Parsons	"	*Bailiff.*
10th	A. C. R. Saunders	Harriston	*Clerk.*
	J. Livingstone	"	*Bailiff.*
11th	J. C. Wilkes	Mount Forest	*Clerk.*
	A. Godfrey	"	*Bailiff.*
12th	D. Macdonald	Drayton	*Clerk.*
	S. B. Trask	"	*Bailiff.*

WENTWORTH.

1st	H. T. Bunbury	Hamilton	*Clerk.*
	E. B. Smith	"	*Bailiff.*
2nd	F. D. Suter	Dundas	*Clerk.*
	F. P. Hanes	"	*Bailiff.*
3rd	J. McMonies jr	Waterdown	*Clerk.*
	John Graham	"	*Bailiff.*
4th	W. Macdonald	Rockton	*Clerk.*
	R. Bannan	"	*Bailiff.*
5th	A. G. Jones	Stoney Creek	*Clerk.*
	S. Springsted	"	*Bailiff.*
6th	L. A. Gurnett	Ancaster	*Clerk.*
	M. J. Wright	"	*Bailiff.*
7th	J. McClemont	Glanford	*Clerk.*
	John Eustice	Binbrook	*Bailiff.*
8th	J. S. Taylor	"	*Clerk.*
	John Eustice	"	*Bailiff.*
9th	W. M. Davidson	Hamilton	*Clerk.*
	J. Greenfield	"	*Bailiff.*

YORK.

1st	A. McL. Howard	Toronto	*Clerk.*
	Jas. Severs	"	*Bailiff.*
	H. J. Severs	"	"
2nd	J. Stephenson	Unionville	*Clerk.*
	Jas. Stewart	Toronto	*Bailiff.*
3rd	J. M. Lawrence	Richmond Hill	*Clerk.*
	Jas. Stewart	Toronto	*Bailiff.*

4th	John Cook	Newmarket	*Clerk.*
	W. M. Malloy	Sharon	*Bailiff.*
5th	Wm. Fry	Sutton	*Clerk.*
	R. H. Sheppard	Georgina	*Bailiff.*
6th	A. Armstrong	Lloydtown	*Clerk.*
	J. W. Crossley	King	*Bailiff.*
7th	J. Reaman	Woodbridge	*Clerk.*
	Jas. Stewart	Toronto	*Bailiff.*
8th	John Paul	Weston	*Clerk.*
	Jas. Stewart	Toronto	*Bailiff.*
9th	J. H. Richardson	Highland Creek	*Clerk.*
	W. Luke	"	*Bailiff.*
10th	E. H. Duggan	Toronto	*Clerk.*
	Ed. Gegg	"	*Bailiff.*

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